



The Politics of Diversity in Nineteenth-Century Britain

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The Politics of Diversity in Nineteenth-Century Britain

A dissertation presented

by

Gregory Andrew Conti

to

The Department of Government

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The Politics of Diversity in Nineteenth-Century Britain

Abstract

This dissertation places the problem of social and ideological diversity at the center of nineteenth-century British political thought. Given our contemporary preoccupation with the diversity of beliefs, perspectives, and identities, it is tempting to assume that this diversity has always been regarded as a central political issue. Surprisingly, however, I contend that ideological diversity was identified as a political problem in a recognizably modern sense only in the aftermath of the French Revolution. A novel conception of ideological diversity emerged in nineteenth-century Britain, generating theoretical advancements above all in two areas: toleration and freedom of expression, and representation.

My examination of the first subject starts with the reconstruction of an important and neglected set of arguments from the 1810s-40s about the impact that the liberty of discussion and the press had in securing social peace and stability. I then move on to explore the extraordinary but little-known burst of theorizing about freedom of discussion that took place in the last third of the century. Contrary to what most political theorists today would expect, I show that the thought of John Stuart Mill was not considered to be representative of the theory of free expression – in part because Victorians, who were committed to a consequentialist and historicist account of the value of toleration, saw him as illicitly importing ahistorical principles of natural right into his work; and in part because he was thought to have expanded his theory beyond a proper notion of toleration to embrace a cluster of beliefs and attitudes (such as the neutrality of the state or the refusal to judge the quality of different opinions) which were unjustified and harmful.

Part two demonstrates how central the concern for diversity was to the era's famous debates about parliamentary reform and political representation. It depicts three leading institutional paradigms for the relationship between representation and diversity. The first is what I call the

variety-of-suffrages school. These authors put forward plans for electoral reform that deliberately varied the suffrage across constituencies in order to ensure seats in the House of Commons for different classes, interest groups, and ideological movements. Adherents to this school subscribed to an ideal of *descriptive representation* – they held that Parliament should “mirror” the diverse society for which it made laws. In contrast to this ideal, a uniform suffrage entailed bestowing an illiberal hegemony on only one part of the body politic: if the property requirement for the vote were restrictive, only the opinions of the upper classes would be included; conversely, if the property requirement were abolished, the working classes, by virtue of their vast numbers, would consistently outvote or “swamp” the other groups in society and lead to their exclusion from the assembly. Beyond simply being unfair to those excluded, such uniform suffrages would impair parliamentary deliberation by diminishing the range of ideas heard and rendering debate “partial.” These defects would in turn lead to ill-judged legislation and political instability.

Victorian *democratic theory*, the second paradigm that I identify, developed two main counterarguments to the variety-of-suffrages tradition. The first was to affirm that the working class was characterized by a diversity of opinions, and thus that a democratic suffrage would not eliminate the contestation among viewpoints that gave the assembly its deliberative character. The second response was that anxiety about social-ideological diversity had no place in the evaluation of electoral structures. For these more radical democrats, descriptive representation and democracy were opposed and irreconcilable. The final vision of the relationship between diversity and representation was the theory of *proportional representation*. The motivation for the scheme of the single transferable vote which Thomas Hare and JS Mill championed, and the stunning range of benefits predicted from its implementation, cannot be understood in isolation from the anxious search for a reform which would expand the electorate without causing the Commons to become unrepresentative and undeliberative. PR was supposed to square this circle and deliver *democratic*

representativeness – to provide an electoral system which could, even under universal suffrage, produce an assembly that was a mirror of society in its diversity. While PR was arguably the most consequential political innovation to emerge from the Victorian era, it was unable to convince the British public of its superiority to these alternative paradigms of representation, and it combined elements from the other two schools of representation in ways that were not always internally coherent or mutually reinforcing.

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Textual Notes

Note on Translations: For foreign language texts I have used, whenever possible, a modern English translation. For texts without a modern English edition, and which I have cited in the original language, the translations are my own.

Note on Editions: Except where otherwise noted, all citations to JS Mill's texts will refer to *Collected Works of John Stuart Mill*, 33 vols., ed. J.M. Robson (Toronto: University of Toronto Press, 1963-91). Likewise, all citations to Bagehot's texts (with the exception of a few instances which are noted) will refer to *The Collected Works of Walter Bagehot*, 15 vols., ed. Norman St. John-Stevs (Cambridge, MA: Harvard University Press, 1965-86).

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Introduction: The Past, Present, and Future of This Dissertation

This dissertation in its present form is a compromise between its past and its future.

I set out to rewrite the history of nineteenth-century political thought by placing the problem of ideological diversity at its center. Given our contemporary preoccupation with the diversity of beliefs, perspectives, and identities, it is tempting to assume that this diversity has always been regarded as a central political issue. Surprisingly, however, I was going to contend that ideological diversity was identified as a political problem in a recognizably modern sense only in the aftermath of the French Revolution. While the multiplicity of religious beliefs had been among the paramount phenomena of early-modern English politics, it was not, I would go on to say, until the nineteenth century that a wider notion of ideological diversity came into focus as a major topic of political theory. My plan was to document this new peak of interest in diversity, especially in the early- and mid-Victorian era, with respect both to what we might call its social-scientific or proto-social-scientific dimensions (the psychological and sociological causes and effects of diversity), and to its impact on normative political theory and institutional design. In particular, I would show, the novel conception of ideological diversity that emerged in nineteenth-century Britain generated theoretical advancements above all in two areas: toleration and freedom of expression, and representation.

This is a story which, in outline at least, I still endorse. One might say quite truthfully that it was in the era under consideration here that the issue took on the *proportions* it more or less has today. We often hear the nineteenth century spoken of as an “age of public opinion,” but too seldom do we recognize that this public opinion was understood to be a divided, polyphonic entity. Similarly, scholars tend not to appreciate how great a gulf exists between (a) the diversity that the nineteenth century took to characterize the “public mind” and (b) the phenomenon of “diversity of opinions” as, say, Hume would have grasped it in an earlier period, when it denoted squabbles between Protestant sects or the split of a narrow stratum of elites into “Court” and “Country”

factions.

While I have not abandoned this story, it is also the case that I have not exactly written it, although important elements of it are still present. If anything, continuities with earlier periods are stressed as much as discontinuities (above all in the first chapter of each part); and there is no concerted effort to prove the unprecedentedness of the nineteenth century's understanding of the diversity of opinion, which according to my initial notions was slated to be one of the dissertation's major tasks.

Even more damningly for my original vision, it is not simply that the argument about *novelty* has been downgraded in favor of pursuing other themes, but also that *the diversity of opinion*, at least as originally conceptualized, no longer holds the manuscript as a whole together. I have wound up with two distinct inquiries – one on toleration, the other on representation – which would probably be better treated separately. This is not to deny that the two halves have a great deal in common. Not only are many of the *dramatis personae* shared, but a number of common topics appear in both: the process by which the exchange of ideas conduces to truth; the relationship between the inclusion of perspectives and the stability of the polity; the concept of public opinion; the historicization of liberal principles; the exceptionalism of British political experience; the perception of modern society as a split and multi-faceted entity; the aversion to natural rights; the influence of “economic” ideas on political argument; the benefits of deliberation; the threat of majority tyranny; the opposition between diversity and stagnation – and many more could be listed. Beyond this thematic overlap, the parts are united by two convictions of mine. The first is that nineteenth-century Britain was marked by an extraordinary richness of thought about politics which has been underserved by political theorists, in part out of a too-exclusive focus on John Stuart Mill. The second is that the period offers a kind of ideal point for taking up questions that still perplex us as citizens of liberal-democratic societies today. Its usefulness as a laboratory for arguments and institutions derives from

the fact that in it a belief in many of the values to which we are still pledged – deliberation, freedom of thought, inclusivity, representation, and so on – was combined with a different sense of how these values interacted with one another and with what institutions were necessary to instantiate them; to give a particularly fertile example, the relationship between these “liberal” values and *democracy* was more uncertain and hotly contested than it tends to be in contemporary political theory. Sharing much with and yet departing interestingly from twenty-first-century politics and philosophy, nineteenth-century Britain is the right kind of mirror to hold up to contemporary political theory.

Despite these commonalities, the two halves of the dissertation have come quite far apart substantively. The first part explores justifications for toleration and expressive freedom. The second, by contrast, explores the theory and institutions underlying the endeavor to achieve the *descriptive representation* or *mirroring* of the nation in the Commons. Reflection on diversity factors into both of these areas of research, but it does so in importantly different ways, and I now think it is best to treat each on its own terms rather than try to press them into a single narrative. My hope at this point, therefore, is to release them as independent volumes. Let me conclude by indicating the final form which I now see this material taking.

To begin with the future of part one: under the title *Beyond On Liberty: The Theory of Freedom of Thought and Expression in Nineteenth-Century Britain*, I foresee a monograph in four chapters: 1) Liberty before Mill: The Pacific Theory of Free Expression; 2) Liberty after Mill, I: Consequentialism, Historicism, and Free Expression; 3) Liberty after Mill, II: The Belated Rise of a Democratic Account of Freedom of Discussion; 4) The French Theory of Toleration under the Second Empire and Third Republic. What is the relationship between the book sketched above and the dissertation?

Chapter one will remain more or less as it stands here. Chapter two of the dissertation can

serve as a placeholder for the prospective second and third chapters of the finished product, since Stephen addressed many of the most significant arguments about religious-intellectual freedom in this time. Nevertheless I will seek to expand the scope in terms both of the authors analyzed and the lines of argument reconstructed.¹ Finally, chapter four of the future version will contrast this Victorian outlook on toleration with the natural rights-based set of theories that developed concomitantly in France and will show how the fight against the prosecution of the press during the Second Empire shaped a body of thought on the open society that, while Anglophilic in some respects, was distinctive in its preoccupations.

Part two on representation is closer to completion as its own work. The dissertation's four chapters are to be supplemented by two more which are not yet fully written. The first of the new chapters (which would be the fifth of the volume) will conclude my account of PR. In the dissertation I discuss PR with respect to its core conceptual and institutional components and its relationship to the other theories of representation that I cover. The fifth chapter will add to this an account of the vigorous debate surrounding the "moral" – broadly construed to include political, cultural, ethical, and intellectual – effects of PR. It will start with an examination of the benefits which proponents claimed for PR, especially those which were thought to originate in the greater freedom it bestowed on the elector. This will be followed by taking in turn four lines of criticism from PR's opponents: (a) that PR would in fact stymie the vital contestation of ideas by suppressing the local electoral fight and fostering a "cliquish" or "crotchety" political culture, thereby leading to

¹ To give an inkling of what this expanded survey would entail, let me mention three themes that will occupy more space in the final version than they have received here. (A) The Victorian age witnessed a great number of *histories* of toleration and the free press, which offered conflicting explanations of their rise; I will give an account of these differences in historical outlook and their political implications. (B) Democracy had been thought of as a regime that was especially inhospitable to intellectual liberty, and this view lasted well beyond Tocqueville, with famous espousers of it like Henry Maine in the 1880s and on. And yet, beginning with the Idealist movement, in the final decades of the century freedom of thought and discussion began to be reinterpreted as having its grounding in democratic norms. Describing how this uneasy and not entirely successful shift occurred will be a major goal. (C) In the dissertation I attend to the genealogy of the image of the marketplace of ideas. Famous as it is, it was eclipsed in the second half of the century by two other *façons de penser*. One, taken from biology, was that of the *evolution* or *natural selection* of ideas; the other, taken from sport, was that of *fair play* between contending doctrines. I will reconstruct the development of these other two archetypes. These and other lines of inquiry will fill out the second and third chapters of the independent volume.

political-intellectual stagnation; (b) that its animus toward parties was misplaced, and that what was desired was an electoral system built on recognition of the positive value of parties in structuring public deliberation and organizing a mass electorate; (c) that it fetishized *parliamentary* deliberation instead of acknowledging that parliament was no longer, in the age of a fully developed press and democratized political culture, a privileged deliberative forum; and (d) that the referendum or the strengthening of the Lords, rather than PR, was the proper corrective to the decline of parliamentarism. Finally, the last chapter will examine John Stuart Mill's thinking about representation in light of the broad array of Victorian traditions of representation that I have depicted. My heavily contextualized Mill will be a messy one – a figure, for instance, whose commitment to mirroring was uncertain; whose democratic credentials were dubious; who was highly elitist, even judged by the standards of his own time; and whose views, like those of many Victorian authors on representation, were rife with difficulties regarding the interaction between the different values which representative government was meant to serve. For this volume I envision some such title as *Representation in Nineteenth-Century Britain: Political Theory and Institutional Design in a Liberal Age*.

Because of the distance still to be travelled before bringing this two-pronged project to fruition, the dissertation resembles more a collection of linked essays than the single seamless argument I had once envisaged. Nevertheless, my hope is that it retains enough coherence to be worth engaging as a whole even in this transitional phase.

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PART ONE

Toleration and Freedom of Expression

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Chapter One

What's Not in *On Liberty*: A Neglected Nineteenth-Century Defense of Freedom of Discussion

The combination of two important characteristics of nineteenth-century Britain makes *On Liberty*, for historians of political thought, something of a dangerous book. The first is the intellectual ascendancy of John Stuart Mill, and the preeminence of *On Liberty* in his oeuvre. His peers and succeeding generations of Victorians recognized his singular stature and influence in the period,² and the inclination to treat his as the mind most representative of his time has probably gotten stronger, rather than weaker, with the passage of time.³ While Mill's reputation during his lifetime was well established on many fronts, *On Liberty* stood out as a work of unique significance both to admirers and critics; it was "the gospel of the nineteenth century."⁴

The second characteristic is that the nineteenth century – more specifically, the span of Mill's life (1806-1873) – saw the consolidation of the freedoms of discussion and of the press in Britain.⁵ At the dawn of the century, in the wake of the French Revolution, the freedoms of speech and publication were under siege.⁶ Several of Mill's earliest forays into journalism as a teenager were

² He was by far "Victorian liberalism's most authoritative and important philosophical exponent"; H.S. Jones, *Victorian Political Thought* (New York: St. Martin's Press, 2000), 95. On the assumption that Mill is representative of the whole of Victorian liberalism (or of liberalism *simpliciter*), see John C. Rees, *John Stuart Mill's On Liberty* (Oxford: Clarendon Press 1985), 78-9; C.L. Ten, "Mill's Place in Liberalism," *The Political Science Reviewer* 24 (Fall 1995), 179-204, at 179-80.

Of course, Mill's preeminence was not unanimously conceded, even among self-identified liberals. For a particularly intemperate rebellion against Mill's stature, see the pamphlet by "A Liberal," with the majestic title (abbreviated here) *A Review of Mr. J.S. Mill's Essay 'On Liberty,' and an Investigation of His Claim to Be Considered the Leading Philosopher and Thinker of the Age* (London: Watson and Gardner, 1867).

³ On the process of Mill's canonization as a political thinker, see Stefan Collini, *Public Moralists: Political Thought and Intellectual Life in Britain, 1850-1930* (Oxford: Oxford University Press, 1993), ch. 8. If anything, this tendency to take Mill's exemplary status for granted has only gotten stronger with the passage of time; it is well exemplified by his typical position in survey courses on the history of political thought as the lone British thinker from the nineteenth century, and often the lone British thinker after Locke.

⁴ Leslie Stephen, "Social Macadamisation," *Fraser's Magazine*, vol. 16, no. 32 (Aug 1872): 150-68, 150.

⁵ In this dissertation I will follow nineteenth-century usage in treating the "liberty of discussion" and the "liberty of the press" as synonymous and interchangeable.

⁶ William Wickwar's *Struggle for the Freedom of the Press, 1819-1832* (London: G. Allen & Unwin Ltd, 1928), and Arthur

articles in defense of the journalist Richard Carlile, who had been imprisoned for atheistic publications, and Mill was himself imprisoned for a short stretch in 1823 for distributing pamphlets on birth control written by Carlile.⁷ A central plank of the platform of the philosophic radicals among whom Mill was raised was the liberty of the press, precisely because they judged it a liberty that the British people were still yet to win.⁸

The intellectual and political climate into which *On Liberty* was released in 1859, however, was markedly different. Describing the mindset of Lord Eldon – the Tory Lord Chancellor at the head of the reactionary effort of the nineteenth century’s first three decades who boasted that he had “prosecuted more libels” than any attorney-general in British history⁹ – Walter Bagehot could already marvel in 1855 (just seventeen years after Eldon’s death) that “as for Lord Eldon, it is the most difficult thing in the world to believe that there ever was such a man.”¹⁰ Indeed, it was a source of bemusement among the first wave of readers that Mill should devote the longest and most famous chapter of his book to championing a *fait accompli*; as one commentator remarked, “he has expended nearly half his little treatise in vindicating the ‘Liberty of Thought and Discussion,’ which

Aspinall’s *Politics and the Press, 1780-1850* (London: Home & Van Thal Ltd, 1949) are thorough and still helpful accounts of the condition of the press in this period. Alexander Bain’s reflections at two-generations remove on the early-nineteenth-century crackdown on the press are still illuminating, as well; see Bain, *James Mill: A Biography* (London: Longmans, Green, & Co., 1882). See also Kevin Gilmartin, *Print Politics: The Press and Radical Opposition in Early Nineteenth-Century England* (Cambridge, 1996); Donald Thomas, *A Long Time Burning: A History of Literary Censorship in England* (New York, 1969); Joel H. Wiener, *Radicalism and Freethought in Nineteenth-Century Britain: The Life of Richard Carlile* (Westport, CT, 1983).

⁷ See Mill’s “Letters on Free Discussion” of Jan-Feb 1823 and his article on the “Petition of Mary Anne Carlile” of May 1823 in *CW*, vol. 22, 9-18, 21-4. On Mill’s arrest, see Richard Reeves, *John Stuart Mill: Victorian Firebrand* (London: Atlantic Books, 2007), 1-2.

⁸ For a concise account of the importance to the Benthamites of overturning the “very wide-ranging laws of libel [used] to silence all kinds of critics of the established order,” see Stefan Collini’s “Introduction” to Mill, *CW*, vol. 21, xl-xli.

⁹ Quoted in Horace Twiss, *The Public and Private Lives of Lord Eldon*, second edition, 3 vols. (London: John Murray, 1844), vol. 2, 166.

¹⁰ Bagehot, “First Edinburgh Reviewers,” in *CW*, vol. 1, 313.

we had vainly imagined was pretty well understood and enjoyed among us.”¹¹ In the space of a few decades the subject of the book’s second chapter, “The Liberty of Thought and Discussion,” had gone from a matter of heated controversy to an article of faith in British political culture.

What sort of danger does the combination of these two truths produce? In a word, the danger is that *On Liberty* will be uncritically accepted as the full statement of the theory of freedom of discussion from this period. Mill embraced so much of what was typical of his milieu – and he so self-consciously sought to digest all the prominent currents of thought which he encountered¹² – that it has proven difficult to resist the impulse to treat him as a proxy for or distillation of the intellectual movement of his lifetime, at least on its liberal side.

And yet, even on a theme as closely associated with Mill as liberty of discussion, it would be a mistake to assume that he had encompassed the full range of reasons for supporting his position. The goal of this chapter is to uncover and examine an alternate mode of justification for this liberty, one about which Mill and subsequent historians and political theorists have had little to say. This effort at broadening our understanding of nineteenth-century theories of an unrestricted press and unfettered circulation of opinion is an endeavor of not merely antiquarian interest. It hopefully goes some way towards stimulating an interrogation of a set of freedoms the value of which is too easily taken for granted. In Mill’s terms, there is some risk that our support of the freedoms of speech and the press will become a “dead dogma.”¹³ Recovering an important but now largely forgotten outlook on them is thus a project of true Millian spirit, helping to prevent our belief in free thought and

¹¹ Anonymous review of *On Liberty* from the *British Quarterly Review* in *Liberty: Contemporary Responses to John Stuart Mill*, ed. Andrew Pyle (South Bend, IN: St. Augustine’s Press, 1994), 185.

¹² On Mills “practical eclecticism,” see Joseph Hamburger, *Intellectuals in Politics: John Stuart Mill and the Philosophic Radicals* (New Haven: Yale University Press, 1965), e.g. 77, 105.

¹³ Mill, *On Liberty*, in *CW*, vol. 18, 243.

discussion from becoming “but one superstition the more.”¹⁴

I begin, in section one, with a review of the scope and grounds of *On Liberty*’s case for the liberties of discussion and the press. Section two reconstructs an argument for these liberties which Mill left out of his celebrated tract and demonstrates its historical and theoretical importance. In the third section I return to Mill in order to explain why he showed so little interest in this line of thought – a line of thought which, as we will see, he might have been expected to embrace. Finally, I conclude with reflections on the way in which the analysis of the pacific theory of free expression alters our understanding of nineteenth-century liberalism more broadly.

1) On Liberty’s Argument for Freedom of Discussion

Perhaps out of an excess of enthusiasm, the historian Henry Thomas Buckle made a curious error in characterizing *On Liberty*. In his review of the work he hailed Mill for the “comprehensive spirit” that enabled him to “concentrate in a single treatise all the arguments” in support of liberty.¹⁵ Yet it ought to have been apparent to any contemporary reader of *On Liberty* that its second chapter on the “liberty of thought and discussion” had no claims to comprehensiveness. Contrary to Buckle’s assessment, it would be much truer to say that Mill explicitly renounced any aspiration to encompass the broad range of arguments salient in Victorian society.

Reconstructing the argument of the second chapter of *On Liberty* is one of the easier interpretive tasks in the history of political thought, for at the end of the chapter Mill summarizes with admirable clarity the “four distinct grounds” on which he had proceeded. They were:

First, if any opinion is compelled to silence, that opinion may, for aught we can certainly know, be true...
Secondly, though the silenced opinion be an error, it may...contain a portion of truth;
and...it is only by the collision of adverse opinions, that the remainder of the truth has any

¹⁴ Ibid., 244.

¹⁵ Buckle, “Mill on Liberty,” in *Liberty: Contemporary Responses to John Stuart Mill*, 63-4. Originally published in *Fraser’s Magazine*, 1859.

chance of being supplied.

Thirdly, even if the received opinion be not only true, but the whole truth; unless it is suffered to be, and actually is, vigorously and earnestly contested, it will, by most of those who receive it, be held in the manner of a prejudice, with little comprehension or feeling of its rational grounds. And not only this, but, fourthly, the meaning of the doctrine itself will be in danger of being lost, or enfeebled, and deprived of its vital effect on the character and conduct...¹⁶

Human fallibility, the indispensability of partial truths to intellectual progress, the degradation of once-living truths into prejudices, and the further degradation of these still-true prejudices into empty, meaningless slogans – these were the grounds on which Mill defended “freedom of opinion, and freedom of the expression of opinion.”¹⁷ These four reasons were, in turn, best understood as pieces of a single overarching argument, namely, that the liberty of forming and publishing opinions was necessary “to the mental well-being of mankind” over the *longue durée*.¹⁸ His case was, Mill was clear, restricted to these considerations.

Contra Buckle, then, it would be more accurate to see chapter two of *On Liberty* as deliberately selective rather than as striving for comprehensiveness. Many kinds of argument simply had no place in Mill’s framework. Two such exclusions are obvious. First, it precluded any invocation of religious or theological grounds. Second, justifications based on even a secular “idea of abstract right” were equally unwelcome.¹⁹ With this rejection of *a priori* or natural rights theory Mill not only remained true to his convictions about the philosophical untenability and moral deleteriousness of all forms of intuitionism, but also expressed the spirit of his milieu. Nineteenth-century English liberalism was singularly inhospitable to any recourse to natural rights. Though Mill high-mindedly announced that he was prepared to “forego any advantage” derivable from an appeal

¹⁶ Mill, *On Liberty*, 258.

¹⁷ *Ibid.*, 257-8.

¹⁸ *Ibid.*, 257.

¹⁹ *Ibid.*, 224.

to natural rights, it is unlikely that the omission of such an appeal cost him much rhetorically²⁰; as we will see in chapter two, consequentialism was resoundingly the order of the day.

Even within the domain of utilitarian arguments for the liberties of the press and of discussion, however, *On Liberty* hardly spanned the full range. Indeed, the book eschewed what was probably the most famous of all lines of justification for these freedoms: to wit, that they were necessary for keeping governors accountable to the governed, for rooting out corruption, and for preventing the rise of despotism.²¹ This argument, a staple of radical advocacy for a free press, is so familiar as hardly to require elaboration here, and received as much ink from Mill's pen as from any other, especially during his 1820s agitation to end prosecutions for blasphemous and seditious libel.²²

While Mill did not incorporate this viewpoint into chapter two's official list of proofs of the utility of unfettered discussion, he nevertheless attended to it in the "Introductory." In the opening pages of *On Liberty* Mill explained his rationale for leaving out such a valuable strand of thought. This was, in brief, that the argument was a good one, had already won over English hearts and minds, and needed no longer to be pressed into service: "the time, it is to be hoped, is gone by, when any defence would be necessary of the 'liberty of the press' as one of the securities against corrupt or tyrannical government."²³ This sort of argument was most appropriate to an earlier set of struggles when "patriots" sought to "set limits to the power which the ruler should be suffered to

²⁰ Ibid., 224.

²¹ For our purposes, we can let the words of Mill's father stand in summation of this line of reasoning: "the freedom of the press...is, in all civilized countries, among all but the advocates of misgovernment, regarded as an indispensable security, and the greatest safeguard of the interest of mankind"; "it is doubtful whether a power of the people in choosing their rulers, without the liberty of the press, would be an advantage"; James Mill, "The Liberty of the Press," in *Political Writings*, ed. Terence Ball (Cambridge: Cambridge University Press, 1992), 116, 117.

²² For Mill's retelling of his activity during this period, see *Autobiography*, in *CW*, vol. 1, 89-93. For a particularly clear enunciation of this view by the young Mill, see the essay "Periodical Literature: Edinburgh Review" in *CW*, vol. 1, esp. 297-300, written when Mill was seventeen. K.C. O'Rourke analyzes the declining weight which Mill placed on this argument from political accountability over the course of his career in *John Stuart Mill and Freedom of Expression: The Genesis of a Theory* (London: Routledge, 2001), e.g. 42, 58.

²³ Mill, *On Liberty*, 228.

exercise over the community” through “a recognition of certain immunities” such as rights of free speech.²⁴ It belonged to an epoch in which the ruled many were locked in struggle with the ruling few. But, Mill judged in *On Liberty*, times had changed; the conditions which necessitated the forceful articulation of this argument in Bentham’s and James Mill’s generations had been superseded.²⁵ In 1859 the more compelling concern was to protect the dissident or nonconforming or unpopular few from the powerful and homogenous many. The largely social phenomenon of “the tyranny of the majority” – “society collectively [tyrannizing] over the separate individuals who compose it” by means which “are not restricted to the acts which it may do by the hands of its political functionaries”²⁶ – was the true object of anxiety for the analyst of modern society.²⁷

This is not to say that Mill imagined the old claims for liberty of discussion and the press to be irrelevant once representative institutions had been established. But it is nonetheless the case that in *On Liberty* he was unwilling to invoke the argument that was so dear to his father and his younger self. After all, was such an argument not liable to the rejoinder, which his father had felt the need to ward off almost four decades prior, that “if the people...really chose the members of the House of Commons, and renewed their choice so frequently, as to have the power of removal after a short

²⁴ Mill, *On Liberty*, 217-8. John Burrow confirms Mill on this point; by the mid-century the vision of a free press as the “watch-dog” protecting the people “against abuses” had lost steam as the “grosser abuses” diminished; Burrow, *Whigs and Liberals* (Oxford: Clarendon Press, 1988), 75-6.

²⁵ Without anticipating too much the subject matter of part two, it is important to note that Mill should have felt so strongly about this point even though, in the year of *On Liberty*’s appearance, still only one in five adult males possessed the franchise; see T.A. Jenkins, *Parliament, Party, and Politics in Victorian Britain* (Manchester: Manchester University Press, 1996), 90.

²⁶ Mill, *On Liberty*, 219-20.

²⁷ Mill’s French translator, Charles Dupont-White, writing during the Second French Empire which had been established upon the collapse of republican representative institutions and which placed severe restrictions on the press, chided Mill for too blithely presuming that the travails of his father’s era were behind (as Mill put it in *On Liberty*’s opening paragraph) “the more civilized portion of the species.” For this and other reasons Dupont-White believed that *On Liberty* was less a philosophical treatment of liberty than a highly localized tract about English politics; see Dupont-White, “Préface” to *La liberté par M. John Stuart Mill* (Paris: Guillaumin, 1860), vi, 1.

experience of misconduct, the freedom of the press would be unnecessary”²⁸ The thought that genuine representative government complete with mechanisms of accountability was sufficient to ensure the harmony of interests between governed and governors without subjecting the country to the “licence of the press” was not one which Mill wanted *On Liberty* to have to fend off. For the Mill of the 1850s, refighting such battles would have distracted from the central concern. The “intolerance” of the “sentiment of the majority” was a more haunting specter than the bigotry and selfishness of governing cliques, and so *On Liberty* could dispense with this older and more familiar argument for the unlimited right of opinion and publication.²⁹

The selectivity of *On Liberty* ought, then, already to be becoming apparent. In addition to eschewing any assistance from religious or natural-right modes of argumentation, Mill’s desire to achieve a broader vindication of “moral, social, & intellectual liberty, asserted against the despotism of society whether exercised by governments or public opinion” led him to sideline the argument from political accountability, popular control, and good governance formulated during the legal-political struggle to end government prosecution and harassment of writers that had raged during the first three decades of the 1800s.³⁰ But in moving toward a higher plane from which he could give his “different and more fundamental treatment” of the issue,³¹ Mill took stock of this earlier line of reasoning, acknowledging its essential truth as well as the good service it had performed for the liberal cause. Another argument, however, one similar in its pedigree and historical importance – flourishing in the first third of the nineteenth century, persisting though dwindling in impact as the Victorian era wore on – was not so fortunate as to receive such a glance of recognition in Mill’s

²⁸ James Mill, “The Liberty of the Press,” 117.

²⁹ Mill, *On Liberty*, 222.

³⁰ Mill, Letter to Theodor Gomperz, 4 Dec. 1858, in *CW*, vol. 15, 581.

³¹ Mill, *On Liberty*, 217.

“small volume.”³² Despite being advanced with varying degrees of sophistication by a host of authors both celebrated and obscure, historians and political theorists today have largely lost sight of this significant strand of liberal thinking about the value of liberty of discussion – perhaps due in part to Mill’s disregard of it. What was this line of thought? It is the task of the next section to give this argument some long overdue exposure.

2) The Pacific Argument for Freedom of Discussion

a) Samuel Bailey

In an 1829 article for the *Westminster Review*, the official journal of “Benthamite” or “philosophic radical” principles with which both Mills and many other radical thinkers were involved, Thomas Perronet Thompson described a book “so finished in its parts and so perfect in their union” that “like one of the great statues of antiquity, it might have been broken into fragments, and each separated limb would have pointed to the existence of some interesting whole, of which the value might be surmised from the beauty of the specimen.”³³ The object of this bizarre hyperbole was, Thompson did not hesitate to say, the second most important of all “comparatively modern books,” surpassed only by *The Wealth of Nations*.³⁴ Such exorbitant praise was, surely, intended for a volume of one of the giants of the Enlightenment, a Hume or Voltaire, or perhaps for one of the seminal philosophic-radical productions such as Bentham’s *Rationale of Judicial Evidence* or James Mill’s *History of British India*.

In fact, Thompson’s accolades were directed at a work called *Essays on the Formation and Publication of Opinions*, first published in 1821 by the utilitarian philosopher, polymath, and failed

³² Mill, Letter to Theodor Gomperz, 4 Dec. 1858, 581.

³³ Thompson, “Essays on the Pursuit of Truth, &c.,” *Westminster Review*, vol. 11, no. 22 (1829): 477-89, 478. Thompson, a former governor of Sierra Leone who would eventually attain the rank of general, provided funds for the founding of the *Westminster Review* and wrote prolifically, especially on economic subjects.

³⁴ *Ibid.*, 477.

parliamentary candidate Samuel Bailey.³⁵ Yet despite these and other testimonials of its influence,³⁶ this text and its author have vanished from the history of political thought.³⁷ This absence has been of scholarly detriment above all in the study of John Stuart Mill and *On Liberty*.³⁸ For Bailey's advocacy of an unfettered press and unrestricted public discussion was not merely "in the air," just one of many texts about which Mill might have encountered in passing as an intellectually active young man. Instead, Mill knew Bailey's corpus from top to bottom,³⁹ and it is likely that he had an especially close acquaintance with the *Formation and Publication*. Mill's father had written approvingly about the book when its second edition was released in 1826,⁴⁰ and after James Mill's death his son republished this review essay, accompanied by excerpts from Bailey's original text, a volume entitled *The Principles of Toleration*.⁴¹ Forgotten though he is today, Bailey was a notable figure in the intellectual world of the Mills.

³⁵ Bailey (1791-1870) was born almost exactly midway between James and John Stuart Mill, and so he straddles the two generations of philosophic radicals. This in-betweenness is reflected in his thought, which combines ideas often considered to be exclusive either to Mill the father or to Mill the son.

³⁶ See e.g. Leslie Stephen, *The English Utilitarians*, 3 vols. (London: Duckworth & Co., 1900), vol. 2, 339; Alexander Bain, *John Stuart Mill, A Criticism with Personal Recollections* (London: Longmans, Green & Co., 1882), 47.

³⁷ The extent to which Bailey has been forgotten is well attested by his complete exclusion from such comprehensive works as *The Cambridge History of Nineteenth-Century Political Thought*, eds. Gareth Stedman-Jones and Gregory Claeys (Cambridge: Cambridge University Press, 2011) and the *Bloomsbury Encyclopedia of Utilitarianism*, ed. James Crimmins (New York: Bloomsbury, 2013).

³⁸ Both K.C. O'Rourke and John C. Rees have offered reconstructions of the background to and development of Mill's views on the liberty of discussion in which Bailey plays no part; see O'Rourke, *Mill and Expression*; Rees, *John Stuart Mill's On Liberty*. What little awareness of his relationship to JS Mill there is has been unduly limited to economic questions; see e.g. Richard Reeves, *John Stuart Mill*, 38.

³⁹ He discussed Bailey's economics as part of his youthful reading group, wrote a review of Bailey's *Rationale of Political Representation*, entered into a dispute with Bailey about (of all things) the theory of vision, listed him as an ally in the fight for women's suffrage, and engaged with him on foundational epistemological matters in the *Logic*.

See Mill, *Autobiography*, 123; "Rationale of Representation," in *CW*, vol. 18, 15-46; "Bailey on Berkeley's Theory of Vision," in *CW*, vol. 11, 245-70; Letter to Samuel Bailey, 21 Jan 1863, in *CW*, vol. 15, 824-5; *Considerations on Representative Government*, in *CW*, vol. 19, 481; *System of Logic*, bk. IV, in *CW*, vol. 8, 649. The confrontation over the theory of vision led Mill to offer some harsh assessments of Bailey's abilities in correspondence with Alexander Bain; for an evaluation of this quarrel about vision, see F.E. Sparshott, "Introduction," to Mill, in *CW*, vol. 11, xlv-lvii.

⁴⁰ James Mill, "Formation of Opinions," *Westminster Review* 6, no. 11 (July 1826): 1-22.

⁴¹ James Mill, *The principles of toleration* (London, 1837). The editorship of the *Principles* was anonymous, but Keith Quincy has made a persuasive case that J. S. Mill was the editor; Keith Quincy, "Samuel Bailey and Mill's Defence of Freedom of Discussion," *The Mill Newsletter* 21, no. 1 (Winter 1986): 4-18, at 7-9.

These facts are important because Bailey's *Formation and Publication* is the closest approximation to *On Liberty*'s second chapter before *On Liberty* itself. For one thing, range of grounds on which Mill would base his proof of the indispensability of free discussion to "mental well-being" is present in Bailey's text.⁴² Even more remarkably, Bailey fretted about such extralegal forms of constraint on opinion as the *social* tyranny of the majority, "the persecution of private antipathy and public odium" which ostracized those who would "deviat[e] from established opinions" as "a species of criminals."⁴³ It should be recalled that Bailey was voicing these worries about social intolerance without the benefit of Tocqueville's insights – the insights from which Mill's own concerns about the matter would originate.⁴⁴

What is of interest from our perspective, however, are not the many commonalities between *On Liberty* and *Formation and Publication*, but rather a discrepancy between them. For in addition to the lines of thought that would make their way into *On Liberty*, Bailey offered an argument which would have no counterpart in Mill's treatise. This was that the liberty of discussion and the press was necessary for the achievement of civic peace and social stability.

Bailey's pacific or stabilizing argument for unrestricted discussion began with two proofs of the "ultimate inefficacy of restraints on the publication of opinions."⁴⁵ The first was what we might call "theodical" in character. Though not quite "whatever is, is right," Bailey was nonetheless putting forth something reminiscent of this notorious Leibnitzian claim, for he argued that whatever the distribution of opinions in a society was, was what it ought to be, and was, moreover, unalterable by

⁴² Quincy offers a detailed, point-by-point comparison of the main lines of Bailey's and Mill's texts, concluding that "the similarity...seems too close to qualify as mere coincidence," though "Mill made better use of Bailey's arguments than did Bailey himself" ("Bailey and Mill," 16).

⁴³ Bailey, *Essays on the Formation and Publication of Opinions, and on Other Subjects*, third edition, revised and enlarged (London: John Green, 1837), 87. Though I will make use of this edition throughout because it is the final one, I have verified that the passages cited were present from the first edition of 1821.

⁴⁴ Tocqueville, who would have been fifteen when the *Formation and Publication* appeared, would not visit the United State for another decade after its publication.

⁴⁵ *Ibid.*, 149.

such blunt methods as the coercive intervention of the state.⁴⁶ The views current in a society necessarily and unavoidably reflected an underlying matrix of social and intellectual conditions against which the weapons of authority were futile. “The interference of power cannot obviate this necessity [for the “regular process” of the contestation of views to take place], nor can it prevent the operation of those general causes, which are constantly at work on the understandings of men, and produce certain opinions in certain states of society and stages of civilization.”⁴⁷ “The various branches of knowledge,” Bailey contended, were “so intimately connected” that it would be as absurd to try to stifle only that small subset of opinions which society deemed harmful as it would be to try to suddenly overturn the entire worldview of a people through the mechanisms of legislation and coercion.⁴⁸ In short, Bailey believed that once the profound, quasi-providential imperturbability of this “natural progress” of opinions was grasped, it would become clear that all “authority can do, is to retard the action of these general causes.”⁴⁹ The laws that governed the movement of opinions were deeper, stronger, and juster than society’s efforts to stall or direct this movement could ever be.

Bailey’s second proof of ineffectuality contained less metaphysics and philosophy of history and more psychology. It consisted of the familiar and longstanding observation – one which even such hardened proponents of coercive measures of intolerance as Locke’s antagonist Jonas Proast had felt compelled to concede⁵⁰ – that efforts to silence an opinion frequently backfired and caused

⁴⁶ In the mid- and late-Victorian periods the defense of toleration would assimilate itself to the trends in evolutionary theory fashionable at the time. In my opinion, however, this evolutionary approach to toleration basically just translated Bailey’s theodical stance into a more “scientific” idiom. For an example of this Darwinian toleration, see Leslie Stephen’s two papers from 1883, published in *The Nineteenth Century*, titled “The Suppression of Poisonous Opinions.”

⁴⁷ Bailey, *Formation and Publication*, 150-1.

⁴⁸ *Ibid.*, 149.

⁴⁹ *Ibid.*, 151.

⁵⁰ “And as to the *Spectatours*...they will be much tempted likewise, not onely to entertain the same opinion of such a Religion [whose adherents had endured persecution], but withall to judge more favourably of that of the Sufferers; who,

the targeted opinion to be regarded more favorably than it had been before:

The mere attempt to suppress a doctrine has often been found to disseminate it more widely....The curiosity roused by their being prohibited, a repugnance to oppression, an undefined suspicion, or tacit inference, that what requires the arm of power to suppress it must have some strong claims to credence, and various other circumstances, draw the attention of numbers, in whose eyes the matter in controversy, had it been freely discussed, would have been totally destitute of interest.⁵¹

In short, repressive measures tended to disseminate “the obnoxious doctrine far more rapidly than it would have diffused itself had it been left unmolested.”⁵²

After having established by these two routes the inefficacy and counterproductivity of policies of suppression,⁵³ Bailey proceeded to deepen his charge against repressive policies. The fact that such measures did not realize their intended result of eradicating immoral or pernicious beliefs was far from their worst consequence. If all that these policies did was to decelerate the operation of the natural causes by which opinions were shaped and modified, or to give a temporary injection of sympathy to the persecuted beliefs, then repression and intolerance were certainly unwise and perhaps also unethical – but by the same token it would be foolish to harbor much concern about them.⁵⁴ Unfortunately, however, attempts at suppression were not merely inefficacious but were, in fact, productive of “positive evils.”⁵⁵ These positive evils were the decline of domestic tranquility and the risk of civil war.

they will be apt to think, would not expose themselves to such Extremities, which they might avoid by compliance, were they not thoroughly satisfied of the Justice of their Cause”; Proast, *The argument of the Letter concerning toleration, briefly consider'd and answer'd*, (London : Printed at the Theatre for George West and Henry Clements..., 1690), 14.

⁵¹ Bailey, *Formation and Publication*, 151.

⁵² Ibid., 152.

⁵³ Perhaps because he did not have a clear analytical separation of them in his own mind, Bailey does not appear to have posed to himself the question of the consistency of his theodical and his psychological explanations for the instrumental irrationality of restrictions on the expression of opinions. Where he could consistently adhere to them both is, I think, dubious.

⁵⁴ “In proportion to the inefficacy of restraints on the publication of opinions, the objections, which we have brought against them, would, of course, be weakened or removed”; *ibid.*, 152.

⁵⁵ Ibid., 152.

Countries which permitted the free circulation of opinions were, Bailey judged, very likely to prove stable and orderly. This stability derived from an important aspect of the “regular process” by which systems of belief succeeded one another – that it was slow and gradual. “In a country, or community, where no such restraints existed, it is obvious that no changes of opinion could well be sudden. Truth, at the best, makes but slow advances.”⁵⁶ In this Bailey’s progressive-theodical rationalism nevertheless diverged decisively from the almost unfathomably optimistic and utopian rationalism that had flourished three decades earlier in the philosophy of William Godwin, who predicted that, if only his compatriots would overcome the “cowardice” that inhibited them from speaking their minds sincerely, then “three years hence there would be scarcely a falshood of any magnitude remaining in the civilized world.”⁵⁷ *Contra* Godwin, Bailey believed that when the human mind encountered new ideas a kind of friction or inertia was involved which imposed a salutary delay on the embrace of novel beliefs and ensured that the succession of opinions would be characterized by continuity rather than by the precipitous overthrow of established modes of thought:

The reluctance of the human mind to receive ideas contrary to its usual habits of thinking would be a sufficient security from violent transitions, did we not already possess another in the slowness with which the understanding makes its discoveries. Arguments, by which prescriptive error is overturned, however plain and forcible they may be, are found out with difficulty, and in the first instance can be entered into only by enlarged and liberal minds, by whom they are subsequently familiarized and disseminated by others.⁵⁸

What threatened civic peace and social cohesion were not changes of opinion *tout court*, but too rapid and too abrupt changes.⁵⁹ Fortunately, the operation of free discussion, paradoxically aided by the limits of the understanding and the pertinacity of human prejudice – “by the fact, that our affections

⁵⁶ Ibid., 152.

⁵⁷ Godwin, *Enquiry Concerning Political Justice*, 2 vols. (London: G.G.J. and J. Robinson, 1793), vol. 1, 241-2.

⁵⁸ Bailey, *Formation and Publication*, 152-3.

⁵⁹ There is an analogy between Bailey’s thinking here and the findings in comparative politics about the importance of the *pace* of industrialization and economic modernization to a country’s political stability.

attach themselves to a doctrine as well as to any external object”⁶⁰ – was certain of itself to keep the advance of intellect “so insensibly progressive, that we can hardly mark the change but by comparing two distant periods.”⁶¹

If the continuity and gradualness of the evolution of beliefs protected free societies against violent upheaval, this mechanism was not, as the reader might imagine, dependent upon the power of majorities to suppress dissent. Bailey anticipated many themes that we have come to associate with the younger Mill, including the alarm at such extralegal forms of constraint on opinion as the *social* tyranny of the majority.⁶² For Bailey, the gradualism that marked the distribution of beliefs over time was due to the piece-by-piece manner in which new truths were ascertained and promulgated, and to people’s reluctance to abandon their traditional views.⁶³ Indeed, Bailey judged that the social intolerance against which John Stuart Mill would later inveigh was productive of discord and violence in the same way that legal, state-sponsored persecution and censorship were. Similarly, James Mill did not endorse majority tyranny, whether in social or political form,⁶⁴ and neither did the Whigs.

Inefficacious from the perspective of eliminating undesired beliefs or even of thwarting their transmission, restrictions on the press were therefore only capable of disturbing the naturally

⁶⁰ Ibid., 286. In the words of Leslie Stephen, there was “an uncomfortable sense of friction and distortion which is always produced by the intrusion of a new set of ideas” – a discomfort that was certainly not without social and psychological benefits; see Stephen, “Darwinism and Divinity,” in *Essays on Freethinking and Plainspeaking* (London: Longmans, Green, & Co., 1873), 86. Stephen knew Bailey’s oeuvre very well, citing him in multiple works and even writing an entry on him for the second volume of the *Dictionary of National Biography* after Bailey’s name had faded. In conjunction with the similarities discussed in note 46 as well as his remarks quoted in ch. 2, note 220, it is likely that Stephen was strongly marked by Bailey.

⁶¹ Bailey, *Formation and Publication*, 153.

⁶² Ibid., 87.

⁶³ Ibid., 152-53.

⁶⁴ See Ursula Henriques, *Religious Toleration in England, 1787–1833* (Toronto: University of Toronto Press, 1961), 254.

peaceful succession of opinions and thereby “producing irritation and violence.”⁶⁵ It is important to stress that Bailey was arguing nothing less than that the most probable outcome of incursions on free discussion was precisely the *opposite* of their intended result; under English law in the period all prosecutions for libel were officially undertaken in order to punish “breaches of the peace.”⁶⁶ Thus, though a restrictive press regime was conceived of and justified as a guarantor of order,⁶⁷ it was in reality a chief source of destabilization:

Now all restraints on the free examination of any subject are an interference with the natural and regular process here described, and produce mischievous irregularities....Under a system of restraint and coercion, we see apparently sudden revolutions in public sentiment. Opinions are cherished and spread, in the secrecy of fear, till the ardor with which they are entertained can no longer be repressed, and bursts forth into outrage and disorder. The passions become exasperated; the natural sense of injustice, which men will deeply feel as long as the world lasts at the proscription or persecution of opinions, is roused into action, and a zeal is kindled for the propagation of doctrines, endeared to the heart by obloquy and suffering.

Such ebullitions are to be feared only where the natural operation of inquiry has been obstructed. As in the physical so in the moral world, it is repression which produces violence. Public opinion resembles the vapour, which in the open air is as harmless as the breeze, but which may be compressed into an element of tremendous power. When novel doctrines are kept down by force, they naturally resort to force to free themselves from restraints. Their advocates would seldom pursue violent measures, if such measures had not been first directed against them.⁶⁸

Sophisticated and subtle as this picture was – combining earthbound psychological analysis of the perspective of the victim of persecution on his ordeal with elaborate analogies to the physical sciences in order to clarify his more abstract vision of the progress of opinions – Bailey did not stop here. There was a further way in which he saw “proscription or persecution” as compromising

⁶⁵ Bailey, *Formation and Publication*, 149.

⁶⁶ Wickwar, *Struggle for the Freedom of the Press*, 18-27. Prosecutions for libel were the primary way, in addition to the imposition of taxes on certain kinds of periodicals, of constraining expression. There had been no prior censorship in England since the expiration of the Licensing Act in 1695.

⁶⁷ For a characteristic statement of the traditionalist fear of the disintegrating impact of a free press, see the collection of Tory Poet Laureate Robert Southey’s political writings, *Essays, Moral and Political*, 2 vols. (London: John Murray, 1832).

⁶⁸ Bailey, *Formation and Publication*, 153-4.

societal tranquility.⁶⁹ This was that they eroded citizens' moral fiber:

What partly contributes to this violence [with which holders of targeted beliefs “burst forth” against their oppressors] is the effect produced by restraint on the moral qualities of men's minds. Compulsory silence...has a tendency to make men morose and hypocritical, discontented and designing, and ready to risk much in order to rid themselves of their trammels; while the liberty of uttering opinions, without obloquy and punishment, promotes satisfaction of mind and sincerity of conduct.⁷⁰

In a word, Bailey thought that a wide array of factors – moral, psychological, metaphysical-providential, historical – combined to make restraints on the circulation of opinions a potent recipe for social instability.

Bailey's pacific or stabilizing argument for liberty of discussion, of course, did not emerge out of nowhere. Indeed, it is of interest not only as one member of the large family of arguments for the removal of restraints on the press, but also as a point of convergence for other important strands of political theory. In particular, it was closely linked to two robust traditions of British political thought.

The first tradition to influence Bailey's theory of discussion was political economy. Over the course of his career Bailey would write more voluminously on economic issues than on issues of any other sort, and even for an era of burgeoning commitment to *laissez-faire* he was unusually clear and forceful in articulating the parallels he saw between the beneficent operation of the economic marketplace and the “natural progress of ideas.”⁷¹ Notice the language in which Bailey couched the central promise of his book; he would prove

that the extrication of mankind from error will be most readily and effectually accomplished by perfect freedom of discussion; that to check inquiry and attempt to regulate the progress and direction of opinions, by proscriptions and penalties, is to disturb the order of nature, and is analogous, in its mischievous tendency, to the system of forcing the capital and industry of the community into channels, which they would never spontaneously seek,

⁶⁹ Ibid., 92.

⁷⁰ Ibid., 154-5.

⁷¹ Quincy goes so far as to claim that “Bailey was the only Benthamite utilitarian openly to have suggested the analogy”; Quincy, “Bailey and Mill,” 15-6.

instead of suffering private interest to direct them to their most profitable employment.⁷² Opinions, no less certainly than prices, must “find [their] level.”⁷³ Interference with the distributive and competitive mechanisms in the intellectual as in the economic domain was futile at best and harmful at worst.

While Bailey’s psychology of opinion differed widely from that of his utilitarian predecessor, he was nevertheless returning to a Godwinian *façon de penser* in envisaging the destructive impact of authoritarian approaches to the press through the model of a protectionist trade policy. The analogy between free trade and free discussion was probably more central to Godwin’s *Political Justice* than to any other work of political philosophy before Bailey’s time. Godwin believed that he was living at a moment of simultaneous economic and intellectual emancipation, and that the same “mistake” regarding the benefits of the “positive interference of society in its corporate capacity” had been “now universally exploded” in the cases both of “commerce” and of “speculative inquiry.”⁷⁴ Neither particular branches of industry nor particular dogmas should “be nursed and patronised by the hand of power.”⁷⁵ “Nothing,” he summed up the parallel pithily, “can be at once so unreasonable and hopeless, as to attempt by positive regulations to disarm the unalterable laws of the universe.”⁷⁶ In the later words of Buckle, the “protective spirit” was the common enemy of modern civilization on the fronts both of the economic market and of the marketplace of ideas.⁷⁷ For what was the penalization of certain beliefs but an endeavor to insulate other, more favored beliefs from the natural forces of competition?

⁷² Bailey, *Formation and Publication*, 97-8.

⁷³ Bailey, *Money and Its Vicissitudes in Value* (London: E. Wilson, 1837), 74.

⁷⁴ Godwin, *Political Justice*, vol. 2, 589-90.

⁷⁵ *Ibid.*, 589.

⁷⁶ *Ibid.*, 589.

⁷⁷ See Buckle, *History of Civilization in England*, 2 vols. (London: Parker and Son, 1857), e.g. vol. 1, 557.

The similarities between Godwin and Bailey went further than simply their application of the framework of political economy to the domain of opinions. For Godwin, without the aid of the more sophisticated psychology with which Bailey was working, nevertheless also moved from the analogy between trade in goods and the circulation of opinions to the warning that encroachments on the latter could disrupt the civil order:

Such institutions [intended to give permanence to certain systems and opinions] are two ways pernicious; first, which is most material, because they render all the future advances of mind infinitely tedious and operose; secondly, because by violently confining the stream of reflexion, and holding it for a time in an unnatural state, they compel it at last to rush forward with impetuosity, and thus occasion calamities, which, were it free from restraint, would be found extremely foreign to its nature.⁷⁸

To meddle with the natural laws which governed the progress of opinion was not merely to slow the march of mind, but also to threaten the fabric of society with violent and sudden disruptions, as the new inquiries in economics could help us to see.

The second ideological source from which Bailey drew in his depiction of the peaceable character of free discussion was the (by his time) venerable instrumental or *politique* justification of religious toleration. The principal authority for this justification (as for virtually all justifications of toleration) in early-nineteenth-century Britain remained Locke, who was indisputably the preeminent “philosopher of toleration” in the period.⁷⁹ Among the array of arguments for toleration which Locke had marshaled was the claim that the true threat to social harmony was not the plurality of

⁷⁸ Godwin, *Political Justice*, vol. 2, 600-1.

Although less interested in the economic parallel, Godwin’s son-in-law, the poet Percy Shelley, followed him in making the pacific case a weapon in his attack on the law of libel; see Shelley, *Shelley on Blasphemy, Being His Letter to Lord Ellenborough Occasioned by the Sentence which He Passed on Mr. D.I. Eaton* (London: Progressive Publishing Co., 1883). The letter was originally published in 1812.

⁷⁹ J.G.A. Pocock, *Virtue, Commerce, and History* (Cambridge: Cambridge University Press, 1985), 229. James Fitzjames Stephen, two generations after Bailey, attested in the strongest terms to the persistence of Locke’s influence: “Read the Essay on Civil Government or the Letters on Toleration, and the same reflection continually presents itself – this is the doctrine which I have heard all my life, on which people all around me are continually acting, and against which more aspiring forms of philosophy are only protests which have not as yet succeeded, and do not seem likely to succeed, in reaching the minds of the great body of people who think about philosophy”; Stephen, “Locke’s Essay on the Human Understanding,” in *Horae Sabbaticae*, 3 vols. (London: Macmillan, 1892), vol. 2, 106-7. Stephen’s thinking about Locke will be a major subject of chapter two.

religious sects and beliefs. Instead, the danger lay in the magistrate's attempts to eradicate this plurality: "It is not the Diversity of Opinions, (which cannot be avoided) but the Refusal of Toleration to those that are of different Opinions, (which might have been granted) that has produced all the Bustles and Wars that have been in the Christian World, upon account of Religion."⁸⁰ Naturally enough for an early Enlightenment text, Locke's defense of the peacemaking quality of toleration lacked the progressive, philosophy-of-history apparatus which entered into Bailey's view of free discussion. Locke's view of the counterproductivity of persecution was, however, founded on observations concerning the psychology of victimization very similar to those of which Bailey would make use. For example, Locke denied that there was anything particularly intransigent or rebellious about *religious* belief that led adherents of those sects which received harsh treatment at the government's hands to become rebellious subjects; if "those who have black Hair (for example) or gray Eyes" were singled out as objects of coercion and disadvantage by society, then "these Persons, thus distinguished from others by the Colour of their Hair and Eyes, and united together by one common Persecution, would be as dangerous to the Magistrate, as any others that had associated themselves merely upon the account of Religion."⁸¹ It was the response of victims to the ordeal of being targeted for their beliefs, rather than the content or character of those beliefs, which posed a danger to civil society. Bailey followed this reasoning exactly; indeed, the absence of an examination of the content of beliefs as a determining factor in whether and when opinions might present a threat to social order was even more complete in the *Formation and Publication* than it had been in the *Letter Concerning Toleration*, since Locke had allowed that there were systems of belief (atheism and Roman Catholicism) the content of which was sufficient to mark

⁸⁰ Locke, *A Letter Concerning Toleration*, trans. William Popple, ed. Mark Goldie (Indianapolis: Liberty Fund, 2010), 13.

⁸¹ Locke, *Letter Concerning Toleration*, 55-6.

them off as a civil peril.⁸² Bailey, on the contrary, was unwilling to designate any opinions as by their very nature inconsistent with the requisites of civil society and therefore beyond the pale of legitimate discussion.

This instrumental defense of toleration was one of the most potent in Europe throughout the eighteenth century.⁸³ It received perhaps its finest expression in Hume, who deemed it the “paradoxical” refutation of religious intolerance – “paradoxical” because “in all former ages...religious sects and heresies and schisms, had been esteemed dangerous, if not pernicious to civil government....The magistrate, therefore, applied himself directly to the cure of this evil as of every other; and very naturally attempted, by penal statutes, to suppress those separate communities, and punish the obstinate innovators.”⁸⁴ Long years of “fatal experience” had been necessary to convince statesmen that – however counterintuitive it seemed that permitting the multiplication of rival sects would advance the cause of peace – “the evil [of sectarian contention] was of a peculiar nature, and was both enflamed by violent remedies, and diffused itself more rapidly throughout the whole society.”⁸⁵ This view of toleration as a “paradoxical principle and salutary practice” retained its vigor through the great religious controversies of the opening decades of the nineteenth century,⁸⁶ with such important pro-toleration voices such as the historian Henry Hallam and the Anglican cleric Sydney Smith featuring it in their work.⁸⁷ As the foremost exponent of Whiggism, Thomas

⁸² Ibid., 50-3.

⁸³ For a contextualization of eighteenth-century theories of toleration, including the *politique* argument, see Richard Popkin and Mark Goldie, “Scepticism, Priestcraft, and Toleration,” in *The Cambridge History of Eighteenth-Century Political Thought*, eds. Mark Goldie and Robert Wokler (Cambridge: Cambridge University Press, 2006), esp. 99-109.

⁸⁴ Hume, *History of England*, 6 vols. (Indianapolis: Liberty Fund, 1985), vol. 5, 130.

⁸⁵ Ibid., vol. 5, 130.

⁸⁶ Ibid., vol. 5, 130.

⁸⁷ See e.g. Hallam, *The Constitutional History of England, from the Accession of Henry VII to the Death of George II*, sixth edition, 2 vols. (London: John Murray, 1850), e.g. vol. 1, 117, 166, 177; Smith, *A Letter to the Electors upon the Catholic Question* (York: Thomas Wilson & Sons, 1826), 11-17.

Macaulay, put it, the Toleration Act of 1688 had done more than any “single law” in English history to bring “gladness, peace, and a sense of security.”⁸⁸

In asserting the peacemaking power of the liberty of discussion, then, Bailey was drawing upon and broadening an argument for religious toleration that was of both contemporary relevance and imposing lineage. What Bailey did was to extend the thesis criminalizing opinion prompted civil strife *beyond the religious domain* to encompass opinions of all sorts. Bailey was fascinated by the amount of ideological diversity in nineteenth-century England – by the “numerous diversities of opinion in society,” by the division of the country “into so great a variety of sects and parties, many of them of the most dissimilar and opposite modes of thinking” on not only religious, but also on political, philosophical, economic, and ethical questions.⁸⁹ The claim that persecution, not diversity, jeopardized domestic tranquility had originally been seized upon in order to provide a theoretical vindication for the explosion of Protestant sects that had come to seem an entrenched and unchangeable fact about English culture by the time of Voltaire,⁹⁰ and it had later received an expansion by Whigs and the Whiggish-minded into a more comprehensive attack on the disabilities and restrictions imposed on non-Protestant religious groups. Believing that he was witnessing an unprecedented phenomenon of widespread public disagreement on a seemingly limitless range of issues, Bailey took this “paradoxical” logic on toleration a step further – he developed it beyond an argument for the protection of various forms of religious worship and belief, into a guarantee of the right to express any opinion on any subject.

⁸⁸ Thomas Babington Macaulay, “Sir James Mackintosh,” in *Critical and Historical Essays*, fifth edition, 2 vols. (London: Longman, Brown, Green, and Longmans, 1848), vol. 2 267.

⁸⁹ Bailey, *Essays on the Pursuit of Truth and the Progress of Knowledge*, second edition (London: Longman, Brown, Green, and Longmans, 1844), 236-7. In this paragraph alone Bailey made mention of “the ministerial party in politics,” “the opposition [in politics],” “the reformers,” the “advocates for a thousand intermediate shades of opinion,” “the evangelical, the orthodox, the unitarians, the methodists, the deists, the phrenologists, the co-operatives, and others which might be specified.”

⁹⁰ “England is properly the country of sectarists,” wrote Voltaire in 1733, and yet they all “live very sociably together”; Voltaire, *Letters Concerning the English Nation*, ed. Nicholas Cronk (Oxford: Oxford University Press, 1994), 26, 30.

b) James Mill and the Whigs

It was noted at the start of this section that James Mill greeted the *Formation and Publication* with remarkable enthusiasm. While in his review of the book he focused on Bailey's proofs of the involuntariness of belief, Mill the elder could only have looked favorably on Bailey's pacific defense of freedom of the press. Indeed, a decade before either Bailey's book or his own celebrated 1823 entry on the "Liberty of the Press" for the *Encyclopædia Britannica*, Mill had laid out the pacific argument in a series of articles for the *Edinburgh Review* and had explicitly highlighted its provenance in *politique* thinking about religious toleration: before embarking on "any attempts to crush the liberty of the press," Mill warned, statesmen ought to recall "one or two observations of Locke," after which he inserted a lengthy quotation from the *Letter Concerning Toleration* beginning with the lines (cited above) on the peacefulness of non-persecuting, religiously diverse societies.⁹¹

Mill's argument that "the countries in which the liberty of the press has, in any tolerable degree been ever enjoyed...are the countries in which the evils of agitation have been least felt" had much in common with Bailey's later version.⁹² There are, however, some notable differences between the two. Despite being a founder of classical liberal economics, Mill's rendition did not utilize the lessons of political economy to clarify the natural laws governing the distribution of opinions. It also lacked the more providential, metahistorical aspects that Bailey would develop. In contrast to Bailey, the center of gravity for Mill's case for the pacific qualities of a free press lay in three areas.

The first, which we have seen uniting Bailey with Locke and many others, was psychological. It consisted of an assessment of the effect on hearts and minds of being victimized for one's beliefs:

⁹¹ James Mill, "Sur la Tolerance Religieuse," *Edinburgh Review*, vol. 16, no. 32 (Aug. 1810): 413-30, 426-7.

⁹² James Mill, "Liberty of the Continental Press," *Edinburgh Review*, vol. 25, no. 49 (June 1815): 112-34, 123.

to favor state intolerance was to commit to the perplexing proposition that “when men are ill used, they will be quiet subjects and cordial allies; when well used, active and dangerous enemies.”⁹³

Relative to the toleration arguments of his predecessors, Mill broke no new ground on this front.

The second area of concern for Mill was historical. Against the caricature of Mill (and of the utilitarians in general) that grew up in the wake of Macaulay’s scathing attack on his ahistorical and deductive method,⁹⁴ Mill was preoccupied with showing that the historical record bore out his depiction of free discussion as an instrument of peace. This preoccupation was natural, for looming over all radical activism in this era was the specter of the French Revolution. The cataclysm across the Channel was a constant feature of arguments for a restrictive press policy;⁹⁵ as Mill’s contemporary John George, in his own lengthy examination of the theory of public discussion, lamented, “arbitrarily-disposed persons have notably made use of the French Revolution to inveigh” against the liberty of the press, as “against every species of reform.”⁹⁶ For Mill’s pacific claim to stand as an empirically true statement in the science of politics, this seeming counterexample would have to be explained away – either as a genuine exception that nevertheless did not disprove the rule, or as an event which, despite appearances, did not in fact run counter to the general proposition of the innocuousness of a free press at all.

⁹³ James Mill, “Sur la Tolerance Religieuse,” 426.

⁹⁴ For an overview to the Mill/Macaulay episode, see Terence Ball, “Introduction” to James Mill, *Political Writings* (Cambridge: Cambridge University Press, 1992), xxiv-xxvi; Jack Lively and John Rees, “Introduction” to *Utilitarian Logic and Politics*, eds. Lively and Rees (Oxford: Clarendon Press, 1978).

⁹⁵ See e.g. Wickwar Lord Grenville’s conviction that an uncontrolled press would plunge England into a Terror of its own; Wickwar, *Struggle for Press*, 151. Grenville, it should be noted, had ceased to be a Tory by this time.

⁹⁶ George, *A Treatise on the Offence of Libel: with a Disquisition on the Right, Benefits and Proper Boundaries of Political Discussion* (London: Taylor and Hessey, 1812), 274. Biographical information on the author is scarce, but it is clear that this is *not* the Spencean John George who participated in the Cato Street Conspiracy.

The oblivion into which George’s book has fallen, unlike that into which Bailey’s has, is deserved. Perhaps the most interesting part of the *Treatise* is the contention that due deference to intellectual superiority did not require any coercive apparatus to support it. He reasoned that human beings were divisible into “five standards” according to their mental “capacities” – “the narrow, the ordinary, the respectable, the enlarged and the most enlarged” – and that the members of each standard naturally looked to those of the standard directly above them for guidance. As a result, a salutary chain of intellectual influence was always in operation (*Treatise*, 247-8). This issue of the naturalness of deference will be dealt with in its relationship to the debate on the suffrage in chapter five.

The former course was eminently available to Mill *père*; it was the route which George, for instance, would take in his almost exactly contemporaneous tract on the press.⁹⁷ To George's mind, the admission that there was a chance that "the right of political discussion," if "abused," could lead to "anarchy" or "despotism" did not undermine his stance on loosening the restraints on expression.⁹⁸ Nor was he wrong to think this. Assuming that peace and stability were the ends in view, it was not required for the demonstration that restrictions on opinion were instrumentally irrational that there be no possibility of the freedom of the press eventuating in disorder; it was enough that a free press be shown to be a more reliable means of achieving these ends than a restricted one. And George was confident that the probabilities supported a freer press: "it will be my business to make it be seen, that the evils to be apprehended from the exercise of political discussion, bear no sort of comparison with the good to be expected."⁹⁹ The younger Mill would have been perfectly content with such a handling of the difficulty posed by the Revolution, for he believed that in the moral and political sciences "a general proposition may be of the greatest practical moment, although not absolutely true without a single exception;" the best that politicians and political scientists could do was to attend to the "general course of things."¹⁰⁰ Despite the black mark of the French Revolution, in which a press run amok had caused immense social and political harm, George was convinced that the normal run of events told in favor of a wide liberty of discussion.

But this more moderate, probabilistic route did not appeal to James Mill. *Pace* George, Mill

⁹⁷ George, *Treatise*, 274-5. To be fair, George was not as radical as Mill. He allowed that some limits might be legitimately enforced on political discussion, though he did not specify what these ought to be (*Treatise*, 257, 326). It would be misleading, however, to overstate the significance of this difference, for he was united with Mill on the crucial points: he opposed the status quo as too restrictive and wanted to liberalize England's press regime.

⁹⁸ *Ibid.*, 188.

⁹⁹ *Ibid.*, 257.

¹⁰⁰ JS Mill, "Rationale of Representation," 21. In this passage he was commending none other than Samuel Bailey for reiterating this too easily forgotten point.

elected the more ambitious course of denying that any frightful lessons about the result of giving free rein to the publication of opinions could be drawn from the example of the Revolution. Instead, he turned on its head the Tory, conservative invocation of the French Revolution as a model for the chaos that would follow any expansion of the rights of discussion. To those who were not too “agitate[d]” by the horror stories told about the Terror to “render themselves in any tolerable degree acquainted with the facts,” the “extraordinary event” pointed the opposite of the Tory moral: “It was not the abuse of a *free* press which was witnessed during the French Revolution; it was the abuse of an enslaved press”; “so far from the freedom of the press being the cause of the French revolution, had a free press existed in France, the French revolution never would have taken place.”¹⁰¹ Mill was merciless towards those who let their good sense be so “subdued by the excesses of the times of terror” that they could imagine that the “popular frenzy” of that period was produced by “*the liberty*, and not by the slavery, of the press – slavery more complete than under any other circumstances it can possibly be made to endure.”¹⁰² The true lesson to be taken from France’s great “public disorders” was that the safest route open to European societies was to leave the press unfettered.¹⁰³

Mill delivered the *coup de grâce* to the reactionaries whose “understandings” had been “paralyzed” by the Revolution in his interpretation of that most renowned hater of the Revolution, “Mr Burke.”¹⁰⁴ According to Mill, Burke had been skeptical that freedom of the press could ever be a *cause* of insurrection and instability. Even Burke, “though his lights were not very steady,” had had insight enough to recognize that what appear to be “abuses of the right of discussion” or “the

¹⁰¹ James Mill, “Liberty of the Press,” *Edinburgh Review*, vol. 18, no. 35 (May 1811): 98-123, 118-9, 121. This article is distinct from the later, more famous one of the same name (cited above in notes 23 and 30); from this point forward, all citations with this title are to this *Edinburgh Review* essay.

¹⁰² James Mill, “Liberty of the Continental Press,” 115.

¹⁰³ James Mill, “Liberty of the Press,” 118.

¹⁰⁴ *Ibid.*, 118-9.

license of the press” were in truth epiphenomenal, mere symptoms of the deeper social and political afflictions that actually jeopardized the stability and integrity of a society.¹⁰⁵

Why was Mill so certain that the press had not only not been a factor in sparking Revolution atrocities, but that in fact it was the *constraints* on the press which had been responsible for many of the worst features of the Revolution? Though he did not parse them into neat categories, he in effect identified two distinct causal paths by which the absence of freedom of discussion in *ancien régime* France had contributed to the calamity of the Revolution. The first, which was noted above in Bailey, was what we might call the *channeling* problem of restricting discussion. The proponents of a doctrine or viewpoint, if hindered from championing it through the peaceable mechanisms of debate and deliberation, would eventually have recourse to the only means left them: arms. “Had real freedom of the press been enjoyed, then the honest men whom France contained [would have] been left a channel by which to lay their sentiments before the public” – that is, they would not have had cause to pursue their goals by any other route than appeal to the minds of their countrymen.¹⁰⁶ As a summation of the point that, where all could participate in the bloodless contest of discussion and debate, all would abstain from violent conflict, Mill quoted approvingly a French work on the press: it was only by “extending the privilege inherent to man of stating his thought, that, in ceasing

¹⁰⁵ Ibid., 118. This theme of the epiphenomenal character of the press – that it merely *expressed* desires, views, and grievances rather than created them out of thin air, and therefore could not be said to *cause* revolutions – was especially dear to Lord John Russell, a leading figure of early- and mid-Victorian Whiggism and two-time Prime Minister. Russell connected this argument closely to the theodicy-infused rationale of a Bailey: “Many have a mistaken notion of what the press is. They suppose it to be a regular independent power, like the Crown or the House of Commons. The press does nothing more than afford a means of expressing, with able argument and in good language, the opinions of large classes of society. For if these opinions, however well sustained, are paradoxes confined to the individual who utters them, they fall as harmless in the middle of thirty millions of people, as they would do in a private party of three persons. Thus it is that the true censor of the press is the national mind... The dark cabal, the secret conspirator, the sudden tumult, the solitary assassin, may all be found where the liberty of printing has never existed. And were a Government to suppress it where it does exist, without taking away the matter of sedition, more crime and less security would probably be the result of their foolish panic and powerless precaution.”; *An Essay on the History of the English Government and Constitution from the Reign of Henry VII, to the Present Time* (London: Longmans, 1866) 205. This passage was present, though with a few stylistic changes, from the original 1821 edition on.

¹⁰⁶ James Mill, “Liberty of the Press,” 119.

to be exclusive, it [the privilege of pronouncing one's opinions] ceases to be harmful."¹⁰⁷

The second way in which Mill perceived the "slavery of the press" to have contributed to the collapse of French society brought the pacific argument into closer connection with the more familiar argument about the epistemic and intellectual gains which free discussion would produce. On this line of analysis, the outrages and acts of violence that afflicted France post-1789 were made possible by the population's lack of education and enlightenment. Yet these intellectual deficiencies of French life were themselves the product of government policy meant to keep public discussion to a minimum: "had a means been secured of instructing the people...the enormities of the revolution would have been confined within a narrow compass, and its termination would have been very different."¹⁰⁸ An ignorant people was more likely to commit atrocities, to be misled by demagogues, and to misunderstand the basic principles of good governance and social order than an enlightened one. Fortunately, Mill informed his readers, there was an easy remedy for this unenlightened condition: "if the people are ignorant, we have only to give them the inestimable advantage of discussion, equally free on both sides, and they will be ignorant no longer"; only when "free discussion has place" will the "people receive the best possible education."¹⁰⁹ Nor was this a solely intellectual education, an amelioration of subjects' ideas and mental capacities alone. It also had a moral dimension, and one that might surprise us given that Mill and the philosophic radicals are often characterized as extreme ideologists. This was that free discussion trained the popular mind in the value of moderation. "Where a press has been previously free, there are means for making the people hear both sides," and "a people who have been habituated to hear both sides" would be duly suspicious of the fanaticism of a "Robespierre" and less liable to grasp at "the designs of the

¹⁰⁷ Ibid., 120. He was quoting the *Memoires de Candide, sur la Liberté de la Presse...* by Jean-Baptiste-Claude Delisle de Sales.

¹⁰⁸ Ibid., 119.

¹⁰⁹ James Mill, "Liberty of the Continental Press," 125.

wicked.”¹¹⁰ Rather than rushing impatiently after every quack scheme or giving themselves over to the caprices of extremists and enthusiasts, a people edified by discussion would distrust “authors of mischief” and remain committed to the slow and unglamorous process of arriving at consensus through argument and persuasion.¹¹¹

Neither of these diagnoses of the instability- and violence-producing character of the *ancien régime* press policy were peculiar to James Mill’s “philosophic radical” ideology. Quite the contrary, Whigs who prided themselves on moderation and prudence were as comfortable articulating them as Mill was. The *channeling* dimension was, for instance, the central idea of Macaulay’s support for a free press:

when the flames are pent up in the mountain, then it is that they have reason to fear; then it is that the earth sinks and the sea swells; then cities are swallowed up; and their place knoweth them no more. So it is in politics: where the people is most closely restrained, there it gives the greatest shocks to peace and order; therefore would I say to all kings, let your demagogues lead crowds, lest they lead armies; let them bluster, lest they massacre.¹¹²

To include a view in the public discussion was to guarantee that it would have no noxious effects. If the view were unsound, it would, after a brief heyday of being loudly trumpeted by some ambitious individual or disgruntled group, lose out to more strongly reasoned opinions; if sound, it would not

¹¹⁰ Ibid., 115.

¹¹¹ Ibid., 115.

¹¹² Macaulay, “A Conversation between Mr. Abraham Cowley and Mr. John Milton, Touching the Great Civil War,” in *The Miscellaneous Writings of Lord Macaulay*, 2 vols. (London: Longman, Green, Longman, and Roberts, 1860), vol. I, 122.

A statement of the channeling argument that was particularly cogent because it closely tied the channeling theme to the Lockean moral psychology of victimization which underwrote so much of the pro-toleration literature of the time came from a little-known Whig partisan, the dissenting minister Robert Hall: “When public discontents are allowed to vent themselves in reasoning and discourse, they subside into a calm; but their confinement in the bosom is apt to give them a fierce and deadly tincture. The reason of this is obvious. As men are seldom disposed to complain till they at least imagine themselves injured, so there is no injury which they will remember so long, or resent so deeply, as that of being threatened into silence. This seems like adding triumph to oppression, and insult to injury. The apparent tranquillity which may ensue, is delusive and ominous; it is that awful stillness which nature feels, while she is awaiting the discharge of the gathered tempest.”; Hall, *An Apology for the Freedom of the Press, and for General Liberty*, seventh edition (London: T. Hamilton, 1822), 21. This text was originally published in 1793 and reprinted frequently in the following decades as part of the long struggle for the Reform Act. In the original version the passage ended on a providentialist note that chimed with Bailey’s views: “There is a boyancy in the public mind, which the moment an unnatural pressure is removed, seldom fails to rise up with an irresistible force and a terrible majesty. It is the prerogative of one Being alone to ‘hold the winds in his fist.’”

need to employ violent or insurrectionary means to secure its triumph, but instead would triumph peaceably and rationally. Macaulay summed up the finding in a handy aphorism: “the danger of states is to be estimated, not by what breaks out of the public mind, but by what stays in it.”¹¹³ This self-equilibrating nature of free discussion was just one particular instance of the rule that liberty in general was self-correcting: “the only cure” for the temporal “evils” that intermittently arise in conditions of freedom was “freedom” itself.¹¹⁴ The anonymous writer of an 1820s tract on the influence of the press saw the matter in the same light: the “liberal” method was “to let the press correct the press, and to permit scurrility and abuse to be rendered nerveless and poisonless” by the counterassault from writers of opposing views.¹¹⁵ As James Mill put it, “the freedom of the press affords a complete remedy for its own diseases.”¹¹⁶

The second explanation which Mill supplied for how the absence of free discussion in France had prepared the way for chaos and disaster – the one which invoked the educative, instructive power of discussion – was equally agreeable to the Whig mindset. The great Whig politician and eventual Lord Chancellor Henry Brougham scolded those who “fe[lt] alarmed” at the nascent march of mind they were witnessing: “real knowledge never promoted turbulence or unbelief,” but “a people kept in the dark, are sure to be easily disquieted; every breath makes them start; all objects appear in false shapes; anxiety and alarm spread rapidly without a cause.”¹¹⁷ Thus “a

¹¹³ Macaulay, “Southey’s Colloquies,” in *Critical and Historical Essays*, vol. 1, 250.

¹¹⁴ Macaulay, “Milton,” in *Critical and Historical Essays*, vol. 1, 41. The self-curative character of liberty was a primary tenet of the Whig creed, though it was not one to which they always live up; A. Wyatt Tilby, *Lord John Russell: A Study in Civil and Religious Liberty*, (New York: Richard R. Smith, 1931), 24.

¹¹⁵ Anonymous, *The Periodical Press of Great Britain and Ireland: Or, An Inquiry Into the State of the Public Journals, Chiefly as Regards Their Moral and Political Influence* (London: Hurst, Robinson, & Co., 1824), 23.

¹¹⁶ James Mill, “Liberty of the Continental Press,” 125.

¹¹⁷ Brougham, *Inaugural Discourse of Henry Brougham, Esq., M.P.: On Being Installed Lord Rector of the University of Glasgow* (Glasgow: The University Press of Glasgow, 1825), 47; “Liberty of the Press and Its Abuses,” *Edinburgh Review*, vol. 27, no. 53 (Sept. 1816): 102-44, 121.

just and lawful government may safely, and even advantageously, encourage the freest discussion.”¹¹⁸

Macaulay applied to the English Civil War of the 1640s the same two-step logic of (1) an illiberal public sphere rendering popular enlightenment impossible and (2) the resulting benightedness manifesting in unruliness and discord: “The government had prohibited free discussion.... Their retribution was just and natural. If our rulers suffered from popular ignorance, it was because they had themselves taken away the key of knowledge.”¹¹⁹ From the Whig perspective, all societies were instable which had as their base a populace untutored by free discussion.

We have now seen two of the three major strands of James Mill’s version of the pacific-stabilizing defense: the psychological insight into the counterproductiveness of penalizing opinions and the nuanced, multi-faceted historical analysis elaborated in order to discredit the use of the French Revolution as an example of the dangers of a free press. The third strand consisted of an assessment of a free press as a mediator between rulers and subjects. It was a commonplace of his son’s generation (and remains one in modern scholarship) that James Mill’s lifetime coincided with the rise of a new and powerful political force: public opinion.¹²⁰ Interest in and convictions about politics had spread beyond a narrow, aristocratic ruling class, and this politicization of a wider section of society had to be taken account of by governments – to pay no heed to the verdicts of this amorphous but engaged body of citizens was to risk being toppled by a disaffected public opinion. A free press, and *only* a free press, Mill argued was capable of bridging the gap between the

¹¹⁸ Brougham, “Liberty of the Press and Its Abuses,” 121.

¹¹⁹ Macaulay, “Milton,” in *Critical and Historical Essays*, vol. 1, 41.

¹²⁰ Dror Wahrman calls the 1810s-20s the “heyday of public opinion”; Wahrman, *Imagining the Middle Class: The political representation of class in Britain, c. 1780-1840* (Cambridge: Cambridge University Press, 1995). On the concept in this period, see Samuel Beer, “The Representation of Interests in British Government: Historical Background,” *American Political Science Review* 51, no. 3 (September 1957): 613-50, section five; Norman Gash, *Politics in the Age of Peel* (New York, 1971), Introduction, ch. 1; J. R. Pole, *Political Representation in England and the Origins of the American Republic* (Berkeley, 1966), 486-87; *Bentham’s Theory of Law and Public Opinion*, ed. Xiaobo Zhai, Michael Quinn (Cambridge, 2014). And see James Thompson’s overview of the literature on public opinion in the late-eighteenth and early-nineteenth centuries; Thompson, *British Political Culture and the Idea of Public Opinion, 1867-1914* (Cambridge: Cambridge University Press, 2013), ch. 1.

two distinct but coequal political forces of government and public opinion and of thereby assuring the stability of society: “It is the natural, nay, we may confidently say, the necessary effect of a press, so to harmonize together the tone of the government and the sentiments of the people, that no jarring opposition between them can ever arise.”¹²¹ Mill drove home the point with characteristic energy and clarity:

By the free circulation of opinions, the government is always fully apprised, which, by no other means it ever can be, of the sentiments of the people....It is at pains to instruct, to persuade, and to conciliate....In a word, the government and the people are under a moral necessity of acting together; a free press compels them to bend to one another; and any contrariety of views and purposes liable to arise, can never come to such a head as to threaten convulsions. We may safely affirm, that more freedom of the press granted to our own country, would have the salutary effect of harmonizing, to a much greater degree, the tone of government and the sentiments of the people, and of rendering all violent opposition between them still more improbable than even at present it is.¹²²

In countries in which a genuine public opinion had developed, suppression of discussion was a harmful strategic misstep, for it closed off a vital source of information, stopped up an outlet for making grievances known, and disabled the healthy interplay between government and the beliefs in society at-large. Through a system of free discussion government and public opinion, instead of standing in antagonism to one another, were brought into fruitful and steady connection.

On this front, as in his identification of the destabilizing consequences of the lack of press freedom in eighteenth-century France, Mill was once again in alignment with the Whigs whom he would come so openly to despise in the 1820s-30s.¹²³ Indeed, as Joseph Hamburger noted, this argument about the press harmonizing government and public opinion¹²⁴ – was at the very center of the Whig tradition. For the Whigs, politics was essentially an arena for prudent adjustment; the duty

¹²¹ Mill, “Liberty of the Press,” 121.

¹²² Ibid., 121.

¹²³ For James Mill’s negative assessment of the Whigs, see Donald Winch, “The Cause of Good Government: Philosophic Whigs vs. Philosophic Radicals,” in Collini, Winch, and Burrow, *That Noble Science of Politics* (Cambridge: Cambridge University Press, 1983) 91-126.

¹²⁴ Hamburger called this the “functionally important” notion of liberty of expression; Hamburger, *James Mill and the Art of Revolution* (New Haven: Yale University Press, 1963), 43.

of the statesman was to reform laws and institutions in order to keep pace with a society in motion. From this perspective, an intermediary between governing circles and citizens' beliefs and desires was indispensable, for the latter were the most important data of which the former needed to take account; to veer too far from the dictates of public opinion was to undermine the goal of stability and good governance through responsive reform that defined the Whig creed. "Where there is a free press, the government must live in constant awe of the opinions of the governed"¹²⁵ – which, unappetizing as it must have sounded to proponents of more paternalistic governance, was a far more secure position for governors to occupy than that of executing their offices and implementing policy in ignorance of the beliefs of the ruled. Only through a free press could subjects' degree of satisfaction with government be accurately ascertained; much of the value of a free press, to the Whig, was that it "reveals discontents, which can then be dealt with by timely concessions."¹²⁶ In order for the government to "harmonise one part with another, and adapt itself to the state of knowledge in the nation," Russell wrote, it had to "submit to hear noisy orators without shrinking"; much as "our gentlemen" might wish for some other way to discover what "disease...menaces" the body politic at a given moment, only this untidy process of contest in the press could fulfill the epistemic function requisite for keeping government and public opinion playing in tune.¹²⁷ Since informed governments were the only ones which could achieve stability, a free press was a necessity.

A further refinement on this functional or mediating view was possible, based on the claim that the liberty of the press had itself been ratified by public opinion, that a principled commitment to it had emerged among the British people. On this view, encroachments on the rights of discussion not only opened up the probability of a rift developing between government and public

¹²⁵ Macaulay, "William Pitt, Earl of Chatham," in *Critical and Historical Writings*, vol. 2, 190.

¹²⁶ Hamburger, "The Whig Conscience," in *The Conscience of the Victorian State*, ed. Peter Marsh (Syracuse, NY: Syracuse University Press, 1979), 19-38, 29.

¹²⁷ Russell, *History of the English Constitution*, 209. This passage first appeared in the 1823 edition.

opinion by preventing the former from accurately ascertaining and responding to the latter, but were *ipso facto* rifts of just this sort. Violations of the liberty of the press did not simply lead to conflicts between rulers and the public downstream, but were in themselves dangerous and destabilizing because they placed the government in opposition to the considered conviction of the citizenry that discussion should be unfettered. Both James Mill and his Whig counterparts agreed that such a state of substantial public support for the liberty of discussion was, or was fast becoming, a feature of modern British life. In 1813 Brougham bemoaned a “total discrepancy between the laws and manners of the country” on this issue, the *laws* remaining restrictive of the press while the *manners*, the “public feelings,” had evolved to embrace wide and open discussion.¹²⁸ Hence prosecutions of writers and publishers had come to be “universally regarded as mere party proceedings, in which the law is made a handle to assist the views of the junto that happens to prevail for the time.”¹²⁹ Mill was no less confident than Brougham that “liberal sentiments” were taking root “in Great Britain, beyond any other country,”¹³⁰ and that as a result the time was near when even the most reactionary government would not dare to risk the sizable public backlash that a crackdown on the press would provoke; Tory “Judges” and “Ministers,” “restrained by their respect for public opinion; by the knowledge which exists in the nation; and the danger which, at a certain point, would attend national disapprobation,” were already exhibiting a new “forbearance” in criminalizing expression.¹³¹ The Whig historian Henry Hallam felt so assured of the decisive triumph of the freedom of discussion that he projected it a century backwards in English history, finding the unstoppable “torrent of a free press” in early instances of juries refusing to convict in cases of political libel and thereby

¹²⁸ Brougham, “Abuses of the Press,” 74.

¹²⁹ *Ibid.*, 75.

¹³⁰ James Mill, “Liberty of the Continental Press,” 113.

¹³¹ James Mill, “Liberty of the Press,” 102.

frustrating the government's assertion of its right to curtail the "licentiousness of the press."¹³² The desire for a free press, both Whigs and radicals of the first decades of the nineteenth century proclaimed (probably more from hopefulness than from certainty) was now a *fact* of English culture. To act in denial of this truth was, they warned, to risk (at best) the durability of the offending government and (at worst) the peace and prosperity of the nation.

A century after Samuel Bailey's plea for an unfettered press, the historian D.C. Somervell, reflecting on English politics in the previous century, concluded confidently that "the development of free discussion" had been a major factor in "promot[ing] an immense amount of indisputable legislative improvement."¹³³ Whether he would also have attributed – and whether we should attribute – a prominent role to the liberty of discussion in ensuring the peace and stability of Britain in the nineteenth century is less certain. But at the least it should be clear by now that many advocates of a free press in the first decades of the century expected it to play precisely such a role.

c) French Admirers

Before turning to the reaction of Mill *filks* to the pacific theories elaborated here, it is worth taking a brief detour across the Channel. For the family of approaches to the intellectual-expressive liberties examined here was an important but little noted aspect of the Anglophic trend of French thought that has been the object of much comment by historians.

One of France's foremost admirers of England, Benjamin Constant, writing in the aftermath of Napoleon's fall, channeled, among other British themes, the vision of the liberty of the press as fulfilling a stabilizing function in his depiction of a liberal, constitutional path for French politics.¹³⁴

¹³² Hallam, *Constitutional History of England*, vol. 2, 331-2.

¹³³ Somervell, *English Thought in the Nineteenth Century* (London: Methuen & Co., 1929), 49.

¹³⁴ On Constant's Anglophilia, see Biancamaria Fontana, "Introduction," to Constant, *Political Writings*, trans. Biancamaria Fontana (Cambridge: Cambridge University Press, 1988), 1.

Constant was especially persuaded by the role ascribed to the press as a harmonizer of society and government. In a way that resembled the Whig emphasis on the need for policy and political action to coincide with the desires of the population – “any amelioration, any reform, the abolition of any abuse, all these are beneficial only when they second the wish of the nation” – he warned that governments who misread “public opinion” and consequently did not “march in step with it” risked tearing the social fabric apart and bringing about their own demise.¹³⁵ Fortunately, the liberty of the press provided a reliable remedy against the hazard of falling-out-of-sync with the national mind: “if you allow public opinion free expression you will have no difficulty in knowing its feelings.”¹³⁶ The disposition of rulers to meddle with the beliefs and opinions of their citizens was powerful one, but if it could be tamed then the stability of modern liberal societies would be achieved:

But if authority will only remain silent, the individuals will speak up, the clash of ideas will generate enlightenment, and it will soon be impossible to mistake the general feeling. You have here an infallible as well as easy means [to the end of stability], freedom of the press; that freedom to which we must always return; that freedom which is as necessary to governments as to the people; that freedom, the violation of which, in this respect, is a crime against the state.¹³⁷

The stabilizing impact of a free press was an important part of the overarching lesson that Constant wanted to teach France: “No despotic state, with all its might, has ever lasted as long as English liberty.”¹³⁸ The complementarity of liberty and stability was, Constant told his French audience, a truth of which British politics and political thinkers had provided ample proof.

In the endeavor to import into France the pacific logic of support for a free press Constant would be followed, two decades later, by the French thinker who would exert the strongest influence on Victorian Britain, Alexis de Tocqueville. A central aim of his chapter on “The Freedom

¹³⁵ Constant, *The Spirit of Conquest and Usurpation*, in Constant, *Political Writings*, 150, 156.

¹³⁶ Ibid., 150.

¹³⁷ Ibid., 150.

¹³⁸ Ibid., 133.

of the Press in the United States” in volume one of *Democracy in America* was to soothe French fears of the destabilizing effects of an unbound, licentious press. For our purposes, it is enough to note two features of Tocqueville’s idiosyncratic variation on the pacific argument. As will be seen, Tocqueville’s reasoning stands somewhat apart from the renditions we have previously examined.

First, Tocqueville accepted that the press had exercised a destructive impact in France, but he elucidated this impact as the result of particular, locally French factors such as the concentration of power in the hands of a small number of writers and editors in Paris; the French press was rendered reckless and overly potent by the “general law of nature” that “the effective force of any power is increased as control is centralized.”¹³⁹ This pernicious centralization of the press was in part the unfortunate but natural consequence of the ascendancy of Paris in the French universe. But it was “also a result of the law,” which restricted individuals’ ability to found a journal and enter the public debate and hence kept the entire public voice fixed in “a few powerful organs” which could consequently exert “a central direction over [citizens’] thinking.”¹⁴⁰ In America, on the other hand, the political and social decentralization of the nation combined with an absolutely free press to produce an “incredible dispersion of [the] forces” of “enlightenment,” a situation in which the “beams of human intelligence do not all emanate from a common center but crisscross in every direction.”¹⁴¹ Due to the “extreme independence” of the press and the multiplicity of newspapers and publications that resulted, Americans were not susceptible to being suddenly mobilized for revolutionary ends by the “violent but lofty” rhetoric of a few journalists: “It is an axiom of political science in the United States that the only way to neutralize the influence of newspapers is to multiply their number. I cannot imagine why such an obvious truth has yet to become a commonplace in

¹³⁹ Tocqueville, *Democracy in America*, trans. Arthur Goldhammer (New York: Library of America, 2004), vol. 1, 209.

¹⁴⁰ *Ibid.*, 210.

¹⁴¹ *Ibid.*, 210.

France.”¹⁴²

While Tocqueville did not cite Adam Smith explicitly, his belief that the proliferation of newspapers conduced to civil peace tracked very closely a similar axiom in the *Wealth of Nations* regarding the proliferation of religious sects. Only when “but one sect [is] tolerated in the society, or where the whole society is divided into two or three great sects” would religious zeal prove “dangerous and troublesome.”¹⁴³ Religious zeal was “innocent,” however, in countries which were “divided into two or three hundred, or perhaps into as many thousand small sects, of which no one could be considerable enough to disturb the publick tranquillity.”¹⁴⁴ On issues that appealed as intensely to the passions as religion and politics, the “public tranquillity” was best served not by “discipline and unity of action” but by diversity, by the multi-vocal symphony of dissent.¹⁴⁵ Unlike Constant, who stressed the gains to security of harmonizing the government and a more or less monolithic public opinion, Tocqueville praised the American establishment of a free press for ensuring that political discourse always contained a sound minimum of disagreement. Note also that the relationship between Tocqueville and Smith paralleled that which we saw in section one between Bailey and Locke: the extension of an argument about the civic effects of religious difference to a wider domain of opinion.

The second way in which a free press was of benefit to peace and order was psychological. Here Tocqueville resembles more closely the mainstream of the British pacific argument than in his foregoing line of analysis. Like James Mill extolling the moderating moral-intellectual influence of the process of free discussion, Tocqueville asserted that the liberty of discussion indisposed citizens

¹⁴² Ibid., 210-1.

¹⁴³ Smith, *An Inquiry into the Nature and Causes of the Wealth of Nations*, eds. R.H. Campbell and A.S. Skinner (Indianapolis: Liberty Fund, 1981), 792-3.

¹⁴⁴ Ibid., 793.

¹⁴⁵ Tocqueville, *Democracy in America*, 211.

to revolt. The multiplicity of programs and beliefs yielded by an unconstrained press regime encouraged in citizens a moderate skepticism, a doubting temperament, which was antithetical to the “fervor” which sparked revolutions.¹⁴⁶ Where free discussion prevailed, individuals were disinclined *both* to be carried away by the bold pronouncement of a new ideology *and* to attach themselves ardently even to the ideas to which they already subscribed. “Since all social theories are criticized and combated one after another, anyone who adheres to one of them holds on to it not so much because he is sure that it is good as because he is not sure that anything is better.”¹⁴⁷ The final outcome of the moral-psychological formation provided by free discussion was that a tumultuous discourse of “opinions” gave way to a more stable and “permanent” (though inglorious and morally deficient) focus on “material interest.”¹⁴⁸ While the freedom of the press was, Tocqueville avowed, not a panacea for the many ills of a democratic age, the incitement of destabilization and turmoil was not among its faults.

Because of the large amount of scholarly interest in Tocqueville’s account of the mental life of democracies and revolutions, it is worthwhile to prolong our return to British soil a moment longer for the sake of noting a further aspect of the first thread of his pacific argument: namely, his counterintuitive approach to the question of the ideological basis of political stability. Although it has gone wholly unrecognized, this view of the salutary fragmentation which attended the liberalization of the press colored the reading of the French Revolution he would elaborate two decades later. The large part which Tocqueville assigned to intellectuals and writers in the Revolutionary drama has provoked ample comment. But what has not been sufficiently considered is Tocqueville’s portrayal of the ideological unanimity of the intelligentsia on the eve of the

¹⁴⁶ Ibid., 214.

¹⁴⁷ Ibid., 214.

¹⁴⁸ Ibid., 214.

Revolution.

The natural expectation in encountering conflict and innovation of such a magnitude is that dissension is responsible. A general agreement or understanding which bound subjects to one another and to their rulers and which justified the social order crumbles, and a competition of ideas emerges where before there was none. And Tocqueville occasionally describes the Revolution in this way, as in his likening of it to the Reformation in his uncompleted sequel to *The Ancien Régime* on the Napoleonic era.¹⁴⁹ The Reformation was the perfect paradigm of this conventional way of thinking about revolution: the turmoil the Reformation generated is due to the increase it caused in the range of religious options on offer in Europe. From unanimity there came diversity, and this diversity sparked violence between the newly-divided groups.

But this is not how the French Revolution appears in *L'Ancien Régime et la Révolution*, or in the bulk of the notes and drafts for the second volume. Instead, its defining feature is precisely the opposite. Rather than a vortex of chaotic disagreement,¹⁵⁰ what brought on the revolution, and what characterized its early stages, was agreement:

However divided they [the French intelligentsia] are in the rest of their thinking, *they all start from this same point: they all think that it would be good* to substitute basic and simple principles, derived from reason and natural law, for the complicated and traditional customs which ruled the society of their times. In closely examining this, we shall see that what may properly be called the political philosophy of the eighteenth century consisted of this single idea.

This situation, so new to history, in which the *entire* political education of a great nation was completely shaped by men of letters, was perhaps what contributed most to giving the French Revolution its particular spirit, and made it lead to what we see today.

Like its adversaries, in fact, the aristocracy freely believed that the most perfect society would be one where natural equality was best approximated; where merit alone, and not birth and fortune, would classify men; to the aristocracy the most legitimate government seemed to be the general will expressed by numerical majority. If interests differed, *ideas were the same, and everyone knew about politics only what they had read in books, the same books.*

¹⁴⁹ Tocqueville, *The Old Regime and the Revolution, Volume Two: Notes on the French Revolution and Napoleon*, trans. Alan Kahan, ed. François Furet and Françoise Melonio (Chicago: University of Chicago Press, 2001), 196.

¹⁵⁰ See e.g. the number of different attitudes and interest groups in the early stages of the Revolution depicted in Michel Vovelle, *The Fall of the French Monarchy, 1787-1792* (Cambridge: Cambridge University Press, 1984).

What is surprising is that I see absolutely *no one* argue about the principles of this question....The ideas of Rousseau are a flood which has momentarily submerged this whole part of the human mind and the human sciences.

[Speaking of the cahiers of the third estate] Almost *complete identity* of general ideas about social questions with the general ideas proposed by the first two orders, above all by the nobility, and even, in fact, in specific ideas, at least as long as it is not a question of particular privileges relating to one of these orders, in which case the commoners go farther than that order on that particular point. *In summary, it is absolutely the same mind, and the only difference is in the greater or lesser logic applied to drawing conclusions from principles.*¹⁵¹

Certainly there were hold-outs and reactionaries of many sorts, and certainly the picture painted in the passages above is a stylized one, but Tocqueville is too insistent on this point not to treat it as his serious verdict as an historian. However many parties and systems would clash as it dragged on, the French Revolution at its onset was not the fruition of a process of ideological fragmentation, but rather the breaking forth of an already settled unanimity – a unified mass that had grown up in the shadows of a deadened public sphere and an unfree press only to “burst forth” from its confinement, as Bailey or the Whigs would write, once the shackles were loosened enough. The sudden and near universal embrace of *one* worldview – and a radically new one at that – by a civilized nation could never have been the consequence of a free politics. If there had been freedom under the *ancien régime*, a simplistic Rousseauianism could not have held such an unchallenged reign over the French intellect. Liberty can never result in such perverse unanimity. In the French Revolution Tocqueville found further confirmation of the counterproductiveness of attempts by the state to control the minds and pens of its citizens, for these attempts did not have the effect of directing thought into the paths desired by the state so much as it generated artificially powerful conglomerations of opinion, uniting into a few hostile camps what would have been a broad set of small and interlocking clusters of belief.

Tocqueville is known as a theorist of the tyranny of the majority. This concept had several

¹⁵¹ Tocqueville, *The Old Regime*, vol. 1, 196, 201; vol. 2, 58, 83, 357. My italics.

facets, but insofar as it meant the constraining power of popular majorities over the intellect, it denoted a form of *pernicious consensus*. It represented the fear that, in egalitarian social-political conditions, legal guarantees would not be sufficient to secure genuine freedom of discussion, and thus that (to use the terms of a Victorian disciple of Tocqueville) “nominal assent” would replace “rational decision” as the ground of societal consensus.¹⁵² What was depicted in the *Ancien Régime*, and what loomed as the *revers de la médaille* of his happy description of the ideological fragmentation accompanying press freedom, was another species of pernicious consensus, one in which legal restrictions on the written word and the absence of meaningful political contest brought about a concurrence of view which was equally unreflective of genuine deliberation but which also had the consequence of sparking insurrection and unrest. A degree of diversity in opinions was a good for Tocqueville, not only in that it was a sign that “independence of mind” had survived the threat constituted by the power of “the majority over thought,” but also, and paradoxically, as an aid to democratic stability in its own right.¹⁵³

To be sure, it is not easy to determine what Tocqueville concretely had in mind as instances of this positive, pacific diversity.¹⁵⁴ But even if this was not the most limpid piece of his outlook, it was one which resonated during the long French struggle for a free press. While the afterlife of these ideas belongs more properly to the following chapter, we can conclude this jaunt into French territory by mentioning that the great French liberal politician, polymath, and opponent of

¹⁵² Albert Venn Dicey, “Ought the Referendum to Be Introduced into England?,” *Contemporary Review*, vol. 57 (Apr. 1890), 492-3.

¹⁵³ Tocqueville, *Democracy in America*, vol. 1, 293.

My interpretation complicates the conventional view of Tocqueville as a standard proponent of “liberal consensus”; see e.g. Cheryl Welch, *De Tocqueville* (Oxford: Oxford University Press, 2001), 225. Few scholars have considered the positive valence which ideological diversity took in many moments of the Tocqueville corpus. One instance: Marcel Gauchet has observed that when Tocqueville most unqualifiedly argued for “intellectual unity” as a necessary basis for society, it was not a “flat unanimity or colorless identity” that he had in mind. But even Gauchet did not pursue the implications of this thought and was more interested in Tocqueville as a theorist of consensus; Gauchet, “Tocqueville, l’Amérique, et nous,” in *La condition politique* (Paris: Gallimard, 2005), 317.

¹⁵⁴ For instance, he seems to have judged that underneath sectarian divisions some agreement in religious sensibility, if not quite in religious dogma, was necessary; Tocqueville, *Democracy in America*, vol. 2, 508.

Napoleon III Edouard de Laboulaye placed Tocqueville's Smithian logic of a free press's contribution to stability through the multiplication of voices at the center of the theory of intellectual liberty which he developed as an alternative to Imperial control of the press.¹⁵⁵ It was a lesson which he credited jointly to the author of *Democracy in America* and to the example of "England, where the press is entirely free."¹⁵⁶

3) JS Mill's Complicated Relationship to the Pacific Argument

As the last section showed, the argument for the liberty of discussion from considerations of peace and stability was a rich and well-developed one, especially in the period of John Stuart Mill's youth and early adulthood. Moreover, this approach was well-positioned, given who some of its major voices were, to have made a strong impression on the younger Mill. Not only such an estimable pillar of liberal views in his beloved France as Constant; not only his interlocutor and fellow economist, logician, and philosophical radical Samuel Bailey; not only Tocqueville, the author who had done more than any other to bring Mill's political philosophy into its mature form¹⁵⁷; but even his own father, the greatest spokesman of radicalism in English history.¹⁵⁸ And yet, as we have seen, Mill was curiously silent about this defense of one of his most treasured causes. His silence regarding the argument is particularly deafening in *On Liberty*, but in fact his marginalization of it extends beyond his famous treatise and through a half-century of prolific authorship.

This is not to say that nothing resembling the pacific argument ever found its way into his writing. However, appearances of such ideas in his corpus are few and far between. One of these

¹⁵⁵ See e.g. Laboulaye, *L'État et ses limites*, fifth edition (Paris: Charpentier, 1871) 134, 167, 222-3; *Le Parti Libéral: son programme et son avenir* (Paris: Charpentier, 1871), 260-2. Laboulaye was the intellectual force behind the Statue of Liberty.

¹⁵⁶ *L'État*, 88.

¹⁵⁷ Mill, *Autobiography*, 199.

¹⁵⁸ *Ibid.*, 213.

rare instances came in a *Westminster Review* article which Mill wrote at the tender age of eighteen on the “Law of Libel and Liberty of the Press.” Unsurprisingly, given his youth at the time of composition, it was little more than a summary of his father’s ideas on the subject.¹⁵⁹ Among the themes rehashed was the pacific argument, couched in phrases nearly identical to James Mill’s: “no people which had ever enjoyed a free press, could have been guilty of the excesses of the French Revolution,” the young JS Mill wrote; only where discussion was absent or constricted would society be threatened by “ignorant and ferocious” outbreaks.¹⁶⁰ From the perspective of stability, a free press could only be a boon, for “discussion...has a necessary tendency to remedy its own evils.”¹⁶¹ James Mill could not have said it better himself.

Echoes of this teenage production recur later, though very rarely. A frequent topic of his journalism on French politics was his outrage at the restrictive press regime of the July Monarchy, and he opined on a few occasions that the crackdown on the press was contributing to, rather than reducing, the turmoil and instability by which French society was plagued.¹⁶² When even the nascent Second Republic on which he had pinned great hopes enacted in 1848 “one of the most monstrous outrages on the idea of freedom of discussion ever committed by the legislature of a country pretending to be free,” Mill wrote an impassioned denunciation of the new law that revived the channeling strand of the pacific argument.¹⁶³ A government, he declared,

deserves the severest blame if to prevent insurrection it prevents the promulgation of opinion. If it does so, it actually justifies insurrection in those to whom it denies the use of peaceful means to make their opinions prevail...by what right can the Assembly now reprobate any future attempt, either by Monarchists or Socialists, to rise in arms against the Government? It denies them free discussion. It says they shall not be suffered to bring their

¹⁵⁹ Collini, “Introduction,” to *CW*, vol. 21, xl. Mill did not think highly of this effort from his salad days; he left it out of all later collections of his occasional writings.

¹⁶⁰ Mill, “Law of Libel and Liberty of the Press,” in *CW*, vol. 21, 11.

¹⁶¹ *Ibid.*, 11.

¹⁶² See Mill’s articles on France in the second volume of his *Newspaper Writings*, *CW*, vol. 23, e.g. 403, 408.

¹⁶³ Mill, “The French Law Against the Press,” in *CW*, vol. 25, 1116.

opinions to the touchstone of the public reason and conscience. It refuses them the chance which every sincere opinion can justly claim, of triumphing in a fair field....It tells them that they must prevail by violence before they shall be allowed to contend by argument. Who can blame persons who are deeply convinced of the truth and importance of their opinions, for asserting them by force, when that is the only means left them of obtaining even a hearing? When their mouths are gagged, can they be reproached for using their arms?¹⁶⁴

Yet even these aspersions on what he took to be the despotic action of the National Assembly were quite different from the standard construction of the pacific defense which we have been investigating. That version began from the (usually unstated) presumption that stability and peace were moral goods, and then proceeded to show that, because censorship and persecution were likely to engender violence and unrest, freedom of discussion was instrumentally necessary for stability and therefore morally required. Though a radical like James Mill had no qualms about countenancing revolution in certain circumstances, the pacific argument *en soi* was neutral with respect to, and analytically distinct from, any view about the legitimacy or rightness of taking violent action in furtherance of beliefs whose expression was proscribed. Hence the argument was equally available to a good Whig like Brougham who had little stomach for revolution.¹⁶⁵ In his stirring indictment of the Assembly's illiberalism, Mill, while employing certain elements of the pacific logic, was more interested in proving the blamelessness or even righteousness of the recourse to violence by Frenchmen whose beliefs were denied "fair play" by the "tyrannical" legislation.¹⁶⁶ This normative justification of rebellion was a far cry from the more purely instrumental or functional character of the classic versions of the pacific argument.

The closest that the mature Mill would come to giving an orthodox statement of this

¹⁶⁴ Ibid., 1118.

¹⁶⁵ For instance, he wrote an impassioned indictment of the French Revolution of 1848; see Brougham, *Letter to the Marquess of Landsdowne on the Late Revolution in France* (London: James Ridgway, 1848).

¹⁶⁶ Mill, "The French Law against the Press," 1116-7.

position was in his reaction to the 1867 Hyde Park riots.¹⁶⁷ The Tory government had tried to bar the Reform League from gathering in Hyde Park for a demonstration on behalf of a further installment of parliamentary reform. In five speeches delivered in the following few weeks, Mill castigated the Tories for endangering the tranquility of the country by their attempted exclusion of the protesters from the park. Their repressive efforts were, Mill asserted, nothing but foolish miscalculation. In England, which possessed well-established traditions of nonviolent political discourse and mobilization, even demonstrations which advocated wrongheaded causes or used “threatening language” posed no danger to public order.¹⁶⁸ On the contrary, the peaceful political process was only imperiled when “arbitrary restrictions” curtailing “the freedom of public speaking” were put in force, for it was then that “the discontent, which cannot exhale itself in public meetings, bursts forth in insurrections, which, whether successful or repressed, always leave behind them a long train of calamitous consequences.”¹⁶⁹ The best course of action for maintaining England’s cherished status as the land of reform rather than revolution was to respect absolutely the right of “political meetings.”¹⁷⁰ In this speech, Mill applied the argument from stability directly to a subset of those rights (here, the rights of public assembly) which fell under the umbrella of liberty of discussion. The potential crisis which Britain faced in the summer of 1867 was explicable as a particular case of the general theory of the counterproductiveness of restrictions on expression which Bailey, James Mill, *et al* had elaborated (though Mill alluded to none of them in this oration).

But this was it. In the thousands of pages which John Stuart Mill would publish on social and political questions, he never gave a general exposition of any version of the pacific justification

¹⁶⁷ For Mill’s rather self-congratulatory recollection of the events in Hyde Park, see *Autobiography*, 278. On Mill’s conduct during this episode, see Bruce L. Kinzer, “Introduction,” to *CW*, vol. 28, xxxi-xxxv.

¹⁶⁸ Mill, Speech on Meetings in Royal Parks, 22 July 1867, in *CW*, vol. 28, 217.

¹⁶⁹ *Ibid.*, 216-7.

¹⁷⁰ *Ibid.*, 217.

of the freedom of discussion. Despite his astonishing prolificacy, the argument was missing from all his major political writings. How is this curious fact to be explained? One possible explanation is that Mill simply judged that the argument had lost its topicality. In the years since his father's death fears of the "volatility, unpredictability, and excess" of public opinion and the press had declined¹⁷¹; in Mill's own optimistic words in the *Autobiography*, "freedom of discussion...seems to be now" in mid-Victorian England, "a conceded point."¹⁷² Given that the operation of a (mostly) free press was becoming a more familiar and salient part of British political culture, perhaps the persuasive impact of returning to the proofs of liberty of discussion's contributions to peace and stability simply looked too minimal to Mill.

This hypothesis probably contains some truth. There is no doubt that Mill the younger, his frequent animadversions upon the social tyranny of the yoke of public opinion notwithstanding, felt far less than his father a necessity "to be always ready to argue and reargue for the liberty of expressing" his "obnoxious opinions."¹⁷³ But it is certainly far from the whole truth. For, despite recent advances, Mill suffered from a keen anxiety about the precariousness of public commitment to this (all things considered) relatively new tenet of liberalism. In the late 1840s Mill was still lamenting that the English "law of political libel, as laid down in the books, is as inconsistent with free discussion as the laws of Russia. There is no censure of any established institution or constituted authority which is not an offence by law."¹⁷⁴ The maintenance of a free press was "entirely an affair of opinion and custom, not of law"¹⁷⁵ – and this opinion and custom was hardly a

¹⁷¹ Burrow, *Whigs and Liberals*, 76.

¹⁷² Mill, *Autobiography*, 89. In the original draft Mill had italicized the copula *seems* in this sentence.

¹⁷³ *Ibid.*, 89.

¹⁷⁴ Mill, "The French Law against the Press," 1117. A quarter-century later Mill's famous antagonist James Fitzjames Stephen would make similar complaints against the persecutorial state of English law, as we will see in chapter two.

¹⁷⁵ *Ibid.*, 1117.

surety in which one could have confidence:

this apparent liberality and tolerance has acquired so little of the authority of a principle, that it is always ready to give way to the dread or horror inspired by some particular sort of opinions. Within the last fifteen or twenty years several individuals have suffered imprisonment, for the public profession, sometimes in a very temperate manner, of disbelief in religion; and it is probable that both the public and the government, at the first panic which arises on the subject of Chartism or Communism, will fly to similar means for checking the propagation of democratic or antiproperty doctrines.¹⁷⁶

If the liberty of discussion stood on shaky ground in England, it was nonexistent in the adopted country of his later years. Residing as he did for long stretches of the last two decades of his life in Avignon, Mill had firsthand experience of life under a regime of effective press censorship.¹⁷⁷ It is not a sufficient explanation of his reticence on the subject of free discussion's role in realizing a stable society, then, that such foundational defenses of the political liberties of expression and publication had ceased to be relevant due to the widespread and fixed commitment to these liberties. For Mill, as we have seen, denied that the principle of free discussion had taken root firmly.

Mill's avoidance of the pacific-stabilizing defense rested on another basis than the impression that it had run its course or that modern, advanced societies like mid-Victorian England had progressed beyond the stage at which they needed to be relearn such elementary lessons. Instead, I believe, this avoidance had other, deeper causes. In truth, the mature Mill would have seen the pacific argument less as out-of-sync with the times than as out-of-sync with his own views. Given his own beliefs Mill could only have seen the theory of Bailey and his father as an unsatisfactory one, and this for two reasons.

The first is that Mill had a great deal of ambivalence about whether the empirical claim that freedom of expression and publication helped the cause of civil peace and political stability was accurate. On the one hand, though he was not shy about stating where he saw his own views as

¹⁷⁶ Mill, *Principles of Political Economy*, in *CW*, vol. 3, 935. This passage was included in the original 1848 edition and retained with only slight changes through six subsequent editions over the next twenty-three years.

¹⁷⁷ See e.g. his Letter to Thomas Hare, 11 Jan. 1866, in *CW*, vol. 16, 1139.

diverging from those of the men who educated him, he never explicitly renounced this particular piece of his ideological inheritance, and, as shown above, he believed that particular cases could arise (France in the 1830s-40s, England in the run-up to the Second Reform Act) in which a complete liberalization of discussion would be advantageous to the prospects of avoiding violence or revolution. On the other hand, as a more general theoretical proposition he held a view that, while not logically inconsistent with endorsing the pacific argument, was certainly difficult to reconcile at the level of actual political life.

The difficulty derives from his subscription to the “Germano-Coleridgean doctrine” on the “condition[s] of stability in political society.”¹⁷⁸ Mill, influenced here as much by Comte and Tocqueville as by Coleridge, averred that “general agreement” was indispensable to stability.¹⁷⁹ Mill espoused a strongly consensus-based theory of stability. Because the “more powerful propensities” of human nature (the “purely selfish ones, and those of a sympathetic character which partake most of selfishness”) “evidently tend in themselves to disunite mankind,” “a common system of opinions” was required to bind men together and to tame these formidable centrifugal forces.¹⁸⁰ The “fixed point,” the “*something* which is settled...and not to be called into question,” the “something which men agreed in holding sacred” – these were essential ingredients of a durable and healthy body politic.¹⁸¹ So important was this cohesive role of shared values and sentiments that, well after the period of Mill’s maximal attraction to “organicist” or “conservative” thought had passed, he still rejected the feasibility of representative democracy in multicultural societies on the ground that these

¹⁷⁸ Mill, “Coleridge,” in *CW*, vol. 10, 125, 134.

¹⁷⁹ *Ibid.*, 133.

¹⁸⁰ Mill, *System of Logic*, 926.

¹⁸¹ Mill, “Coleridge,” 134. Mill would have agreed with his contemporary Mark Pattison, an Anglican priest and historian of religion, that “when an age is found occupied in proving its creed, this is but a token that the age has ceased to have a proper belief in it”; Pattison, “The Tendencies of Religious Thought in England, 1688-1750,” in *Essays and Reviews* (London: Parker and Son, 1860), 264.

societies were incapable of forming a “united public opinion.”¹⁸² “When the questioning of these fundamental principles is (not the occasional disease, or salutary medicine, but) the habitual condition of the body politic,” Mill presaged darkly, “and when all the violent animosities are called forth, which spring naturally from such a situation, the State is virtually in a position of civil war; and can never long remain free from it in act and fact.”¹⁸³

As an empirical matter, then, a situation of near-complete consensus on a small but crucial set of values was a prerequisite of stability. Now, this emphasis on consensus never led Mill to abandon the principle of freedom of discussion.¹⁸⁴ But it did prevent him from seeing this liberty as a pacifying or stabilizing factor. For while there had been, and would likely be again, epochs in which the liberty of discussion would be consistent with maintaining this indispensable consensus – circumstances in which, while it would be “lawful to contest in theory” the meaning and purpose of society’s central institutions and practices, the importance of these institutions would nonetheless be “in the common estimation placed beyond discussion”¹⁸⁵ – no such harmony was possible in “ages of transition” such as Mill believed his own lifetime to be.¹⁸⁶ In this state of affairs “to discuss, and to question established opinions, are merely two phases of the same thing.”¹⁸⁷ Nor did Mill regret this intrepid critical temper of his age. Indeed, he perceived it as being still deficient relative to the level of scrutiny which he wished to characterize public debate. He wanted every doubt about social

¹⁸² Mill, *Considerations*, 547. Mill’s pessimism about the possibility of multicultural, multinational politics has important implications for his theory of representation, as well, marking him off from other supporters of PR.

¹⁸³ Mill, “Coleridge,” 134.

¹⁸⁴ See O’Rourke’s convincing disproof of Himmelfarb on this point; O’Rourke, *Mill and Expression*, 53-6. For Himmelfarb’s interpretation of Mill as abandoning his support of freedom of the press during the height of his Coleridgean period, see Himmelfarb, *On Liberty and Liberalism: The Case of John Stuart Mill* (New York: Alfred A. Knopf, 1974), esp. 46-7.

¹⁸⁵ Mill, “Coleridge,” 134.

¹⁸⁶ On the notion of the “age of transition” in Victorian Britain, see Walter Houghton, *The Victorian Frame of Mind* (New Haven: Yale University Press, 1957), 8-23.

¹⁸⁷ Mill, “The Spirit of the Age [1],” in *CW*, vol. 22, 233.

and political norms to be searched to its roots even if it meant turning up a bevy of wrongheaded views along the way.¹⁸⁸ The order of the day was universal interrogation and disagreement. A new consensus sufficiently well-founded to exist “beyond discussion” stood at “an incalculable distance” from the present moment when the processes of deliberation and agitation were doing more to “throw[] aside” old “errors” than to propagate new verities, and consequently the debates carried on through the freedom of the press were bound for the foreseeable future to be agents of disintegration and diversity rather than of cohesion and consensus.¹⁸⁹

Despite his standing as Western political theory’s most famous apologist for freedom of discussion, Mill’s honesty prevented him from claiming for his most cherished principle attributes which he did not believe it to possess. Mill embraced the liberty of discussion not because he thought it was without risks, but because he thought the risks were worth running. He didn’t blanch from admitting that French governments had collapsed not only when the press was unfree but also when, as in 1830, “France had enjoyed a practically free press” for “sixteen years prior.”¹⁹⁰ And he never feigned assurance that a free press was any kind of remedy for the instability which he expected to beset Victorian England as it would any society “in transition.” Freedom of discussion

¹⁸⁸ Hence his praise for the St. Simonians for being “the only association of public writers existing in the world who systematically stir up from the foundation all the great social questions,” as well as his repeated commendations of working-class voices in politics even when they appeared to be doing no more than “ventilat[ing] their nonsense” and giving voice to “wild aberrations,” precisely because the working classes were less inclined than other segments of society to accept conventional principles unquestioningly; see “Comparison of the Tendencies of French and English Intellect,” in *CW*, 23:444; “Recent Writers on Reform,” in *CW*, 19:350.

¹⁸⁹ Mill, *On Liberty*, 252; ““The Spirit of the Age [1],” 233.

¹⁹⁰ Mill, “Close of the Session in France,” in *CW*, vol. 23, 455.

Mill’s timeline on the relative degrees of freedom at different periods is interesting. His sanguine account of the latitude afforded the press under the Restoration relative to the July Monarchy was not idiosyncratic; Dupont-White, for instance, hailed it as an era “où la France tout entière avait la parole”; *Le rôle et la liberté de la presse* (Paris: Charles Douniol, 1866), 21. However, restrictions on the press were uniformly much tighter in France than England for the whole of Mill’s life, including under the Restoration; scholars generally agree that it was not until the landmark legislation of the Third Republic in 1881 that a free press could be said to exist in France.

See e.g. François Furet, *Revolutionary France, 1770-1880*, trans. Antonia Nevill (Oxford: Blackwell Publishers, 1992), *passim*; Cheryl Welch, *Liberty and Utility* (New York, 1984), 155-6; Thomas Cragin, “The Failings of Popular News Censorship in Nineteenth-Century France,” *Book History*, vol. 4 (2001): 49-80; Robert Goldstein, “Fighting French Censorship, 1815-1881,” *The French Review*, vol. 71, no. 5 (1998): 785-96; Charles Sowerwine, *France since 1870*, second edition (Palgrave Macmillan, 2009), 33. And see note 27 above.

in these conditions could lead even a nation with as much political continuity as Britain into disorder and revolution – and Mill was willing to accept this potential cost.¹⁹¹ Any increase in instability or the likelihood of revolt was more than offset by free discussion’s role in defeating the true “evil”: “stagnation.”¹⁹² Intellectual and expressive freedom was a good that far outweighed any fears of unrest or instability, and this freedom was to be accepted and promoted not out of blindness to the attendant perils but because those perils were recognized, assessed, and determined to be of lesser consequence than an infringement on the rights of discussion. Once the true magnitude of the social and intellectual benefits provided by liberty of discussion was well understood, concerns about peace and stability, though real, would be seen to pale in comparison.

This last thought brings us to the second cause for Mill to have been dissatisfied with the pacific argument. This was that, even if this argument had been true (and it retained, as we have seen, some plausibility in Mill’s eyes), it would still have been the wrong kind of reason on which to ground one’s support for freedom of discussion. The problem with the pacific argument was that it seemed to have a special appeal for thinkers who, while accepting the liberty of discussion, accepted it *in the wrong manner*.

We saw in section two that the justification from peace and stability was agreeable to Whigs such as Brougham. To the young Mill, this ability of the argument to appeal beyond the radicals to the Whig mainstream was no recommendation for it, since Mill had nothing but contempt for the Whig “*coterie*,” the “set...who commanded a certain number of seats in Parliament” despite lacking

¹⁹¹ Though Mill, like Tocqueville, deplored the revolutionary mindset of the French and dismissed revolution as unjustifiable in the context of 1860s England, he followed his father in having no general normative opposition to revolution and was not squeamish about contemplating the prospect; see e.g. Mill, Letter to John Austin, 13 April 1847, in *CW*, vol. 13, 713-4; “Vindication of the French Revolution of February 1848,” in *CW*, vol. 20, 317-63. And see Geraint Williams, “JS Mill and Political Violence,” *Utilitas* vol. 1 (1989): 102-11.

¹⁹² Mill, “French News [85],” in *CW*, vol. 23, 671.

any principles of their own.¹⁹³ The pacific argument was a perfect rhetorical tool for “Trimmer[s]” who understood politics as a means of guaranteeing peace through compromise rather than as a domain in which to “achieve a moral purpose.”¹⁹⁴ Those who provided a temporizing or narrowly instrumental account of liberty of expression could not be trusted to stand by this liberty when its instrumental value appeared to decrease; unsurprisingly, Mill showered scorn on Brougham’s defense of the free press for what he took to be its tepid and qualified character.¹⁹⁵ Whigs were not reliable allies on the question of the freedom of the press, and the pacific argument as deployed by such unprincipled powerbrokers could only been a mealy-mouthed bid to switch from the “aristocratic” to the “popular side of [the] question” when the latter side’s tide looked to be rising.¹⁹⁶ On Mill’s reckoning, the Whigs upheld freedom of discussion because they felt that they *had to*. This attitude, Mill was emphatic, merited condemnation.

As Mill would have known well from the confidence with which the likes of his father and Samuel Bailey asserted the pacific justification, nothing about this justification precluded it from forming part of a profound moral commitment to the liberty of the press. On its own, however, the argument could be deployed by thinkers whose understanding of the value of freedom of discussion was, to Mill, paltry and inadequate. Let us take two examples. First, Archibald Alison – a Scottish Tory writer whom Mill’s “fingers itched to be at” and who was prominent in the first three decades of the nineteenth century.¹⁹⁷ On the one hand, Alison wished that the government would undertake

¹⁹³ Mill, “Walsh’s Contemporary History,” in *CW*, vol. 6, 342.

¹⁹⁴ Joseph Hamburger, “The Whig Conscience,” 28. On the young Mill’s, and the philosophic radicals’ in general, contempt for the Whigs, see Hamburger, *Intellectuals in Politics*, 65-7. And see note 123 above.

¹⁹⁵ Mill, “Periodical Literature: Edinburgh Review,” 298-300.

¹⁹⁶ *Ibid.*, 294. The Whigs’ record on liberalization of discussion during the 1820s and early 1830s was, from the radical perspective, deficient: Wickwar, *Struggle for Press*, e.g. 146, 152, 292, 301; W.J. Linton, *James Watson: A Memoir* (Manchester: Abel Heywood and Son, 1880), 42-3. Hamburger, however, emphasizes that the Whigs generally maintained the liberty of the press and public meetings throughout the Reform crisis; Hamburger, *Mill and Revolution*, 43.

¹⁹⁷ Mill, Letter to Macvey Napier, 15 Oct. 1842, in *CW*, vol. 13, 551.

a project of considerable financial support to establish a permanent, state-endowed conservative press corps in order to defeat the “pleaders on the side of democracy”; on the other, he forswore any scheme to reduce the press to “slavery” as it had been in France “under Napoleon.”¹⁹⁸ Given the extreme skepticism with which he regarded the ability of free public discussion to generate (what he believed to be) the correct answers on political and economic questions, he might have been expected to toss any liberal, open press policy overboard and to advocate the reinstatement of a censorship regime. But he explicitly disavowed any “brutal remedies,” any “talk of coercing the press by fetters or prosecutions,” and advocated fighting the pen of falsehood with only the (state-subsidized) pen of truth in great part because repressive efforts “would be the prolific parent of never-failing discord.”¹⁹⁹ Had Alison lived to read *On Liberty*, he would not have felt much sympathy with its optimistic rationalism. And yet he was an enemy of all persecution, because he did not want his country to be plunged into disorder and disharmony.

More distressing to Mill than Alison’s illiberalism would have been the fact that Tocqueville, for all his beautiful paeans to liberty and haunting expressions of the degrading effects of the tyranny of the majority, was closer to the Scottish Tory on this issue than to Mill. As we saw in section two, Tocqueville offered his own idiosyncratic version of the pacific argument. This pacific argument was, Tocqueville was clear, meant as a piece of a larger deflationary account of the value of the liberty of discussion: “I confess that I do not feel toward the freedom of the press that complete and instantaneous love that one grants to things that by their very nature are supremely good. I love it

Alison was one of the most famous conservative intellectuals of the second quarter of the century, in particular due to his ten-volume *History of Europe during the French Revolution*. In light of his hatred for the Revolution he opposed all constitutional change in Britain; his views on these matters will appear in chapters 3-4. See Michael Fry, “Alison, Sir Archibald (1792-1867),” *Oxford Dictionary of National Biography*, Oxford University Press, 2004 [<http://www.oxforddnb.com.ezp-prod1.hul.harvard.edu/view/article/349>].

¹⁹⁸ Alison, “The Influence of the Press,” *Blackwood’s Edinburgh Magazine*, vol. 36, no. 226 (Sept. 1834): 373-91, 380, 382.

¹⁹⁹ *Ibid.*, 377, 389. The final line quoted is itself an approving quotation by Alison of a Dutch book on the press.

out of consideration for the evils that it prevents far more than for the good that it does.”²⁰⁰ In democratic ages the liberty of the press was a useful tool for preserving the “public tranquility” without falling under the “despot’s heel.”²⁰¹ Despite the “universal...applause and assent” with which Tocqueville’s views were greeted in England,²⁰² this was decidedly not the stuff of which the famous second chapter of *On Liberty* was to be made. From Mill’s point-of-view, *Democracy*’s evaluation of the press was closer to unreliable and unscrupulous Whiggery than to his own recognition of the liberty of discussion as a crucial component of human flourishing. And indeed, during his brief stint as a Cabinet minister in 1849 Tocqueville turned against this liberty, encouraging the National Assembly to “suppress the vagaries of the press with even more energy than had been used under the [July] Monarchy.”²⁰³ When push came to shove, the pacific argument did not prevent Tocqueville from penalizing the press even more harshly than the preceding regime had done – a regime which Mill condemned for betraying the principles of free discussion.

It should be apparent how foreign this mindset of Alison and Stephen was to Mill. Mill wanted the freedom of the press to be valued as a good in its own right. To be sure, Mill’s official word was that the liberty of discussion, like any liberty, had no freestanding, *a priori* normative status. Its official justification was consequentialist, namely, that it promoted “the permanent interests of man as a progressive being.”²⁰⁴ Mill, true to his Benthamite-utilitarian heritage, refused to declare that the liberty of discussion was an “inherent moral truth” or a “natural right” of any kind, and instead insisted that this liberty, like all facets of social and political life, had to be justified on the

²⁰⁰ Tocqueville, *Democracy*, vol. 1, 205.

²⁰¹ Ibid., vol. 1, 211, 206.

²⁰² Henry Sidgwick, “Alexis de Tocqueville,” in *Miscellaneous Essays and Addresses* (London: Macmillan, 1904), 361.

²⁰³ Tocqueville, *Recollections*, trans. George Lawrence, eds. J.P. Mayer and A.P. Kerr (New Brunswick: Transaction Books, 1987), 220. Given the attentiveness with which he followed French affairs, Mill was almost certainly aware of this fact.

²⁰⁴ Mill, *On Liberty*, 224.

basis of the benefits which it produced. As his father and Samuel Bailey demonstrate, to emphasize peace and stability was perfectly consistent with this philosophy, for these were goods which would count on the positive side of the ledger when one set the costs and benefits of liberty against one another.

Yet this formal utilitarian framework had only a loose connection with John Stuart Mill's support of the freedom of thought and discussion – loose enough, in fact, that many fellow Victorians came to see Mill's politics as a hybrid of utilitarianism and natural rights, as we will investigate in the next chapter. For on the ground of actual politics and public discourse Mill had no desire for the liberty of thought and discussion to be subject to a calculus in which it would be weighed as one of potentially many factors felt to be of present political import. This calculative or instrumental mode of reasoning would have been a hindrance to the emergence of the only proper foundation for the liberty of discussion: the “conscientious sense of the importance to mankind of the equal freedom of all opinions.”²⁰⁵ He wanted the liberty of discussion to be affirmed as a dictate of justice and a vital element of social and intellectual well-being, not simply acquiesced in as a *modus vivendi* by an assortment of groups who would have preferred to impose their “sympathies and antipathies” on society as a whole.²⁰⁶ “A clear insight, indeed, into this necessity [of “antagonist modes of thought”] is the only rational or enduring basis of philosophical tolerance; the only condition under which liberality in matters of opinion can be anything better than a polite synonym for indifference between one opinion and another”²⁰⁷ – or, he might have continued, than a synonym for the prudent but morally discreditable subordination of one's persecutory preferences simply for the sake of keeping the peace.

²⁰⁵ Mill, *Autobiography*, 53.

²⁰⁶ Mill, *On Liberty*, 221.

²⁰⁷ Mill, “Coleridge,” 122.

Thus even if it had held absolutely as an empirical law of politics, Mill would still have felt a sense of failure if the pacific argument had kept *On Liberty*'s proofs of liberty of opinion's contributions to humanity's intellectual and moral progress from attaining their rightful place at the center of British liberalism. The pacific argument, in Mill's eyes, encouraged a view of liberty of discussion as a concession, an accommodation to an unfortunate but intransigent reality—exactly the mindset that he found least conducive to a genuine appreciation of intellectual and expressive freedom. Perhaps, then, it was not much of a tragedy to Mill that, to use his terminology, the pacific argument was only a “partial truth” anyway.²⁰⁸

4) Conclusion

This chapter's recovery of the pacific argument modifies our understanding of nineteenth-century liberalism in important ways that have broader ramifications for the history of British political thought. To start with, despite the work of the late John Burrow and a few others, there is a strong perception of a firm division between the outlooks of Whigs and radicals-utilitarians.²⁰⁹ In fact, on the crucial political and theoretical controversy about the nature of the press and its freedom, these groups were united at the start of the century and in the period of Reform in their vision of a free press as an instrument not only of enlightenment but also of stability. Indeed, in this sense both Whigs and early radicals emerge as theorists of the union of order and progress that is usually ascribed to French movements like Comtism and doctrinairism and to those English figures (like the younger Mill) who were influenced by them.²¹⁰

²⁰⁸ Ibid., 124.

²⁰⁹ See Burrow, *Whigs and Liberals*; Collini, Winch, and Burrow, *That Noble Science of Politics*; Lively and Rees, “Introduction,” to *Utilitarian Logic and Politics*.

²¹⁰ See Gertrud Lenzer, “Introduction: Auguste Comte and Modern Positivism,” *Auguste Comte and Positivism: The Essential Writings* (New Brunswick, NJ: Transaction, 1998), xxxi-lxxxii; Aurelian Craiutu, *Liberalism under Siege: The Political Thought of the French Doctrinaires* (Lanham, MD: Lexington Books, 2003). On English Comtism, see Christopher Kent, *Brains and*

Similarly, the character of the pacific defenses of the press charted here challenges the standard notion of a sharp boundary between Enlightenment and nineteenth-century political thought. Excepting certain revisionist accounts, the political thought of the latter period is still often read as decisively breaking with the former, with Romanticism replacing Reason, history displacing nature, utility ending the enthusiasm for the Rights of Man. The authors surveyed in this chapter, on the contrary, display continuity with earlier traditions of thought. Complicating the verdict that there was a move away from Locke in nineteenth-century liberalism,²¹¹ philosophic radicals like James Mill incorporated Lockean themes into their case for liberalizing the press; their view of free discussion drew from and broadened the Enlightenment vision of religious toleration as an instrument for achieving peace in conditions of religious diversity. Likewise, the “free trade” in ideas was an image that functioned in much the same way in the late-Enlightenment revolutionary philosophy of William Godwin as it did in the work of Bailey, a thinker typical of the Age of Reform. In calling upon the resources of political economy and religious toleration, nineteenth-century theorists of the relationship between stability and expressive freedom were working in grooves well worn by their predecessors.

Furthermore, reconstruction of the pacific strand of free press argumentation deepens our understanding of two other concepts that frequently appear in studies of nineteenth-century liberalism, but often without the necessary precision. The first is the aforementioned one of the marketplace of ideas. Perhaps due to Justice Holmes’s popularization of the marketplace of ideas as the “best test of truth,”²¹² the analogy of freedom of opinion with the competition of goods in the market is usually thought of as a way of explaining intellectual progress, the triumph of truths over

Numbers (Toronto: University of Toronto Press, 1978).

²¹¹ E.g. Duncan Bell, “What Is Liberalism?,” *Political Theory* 42, no. 6 (December 2014), 682-715.

²¹² Oliver Wendell Holmes, Dissent in *Abrams v. United States*, in *The Essential Holmes*, ed. Richard Posner (Chicago: University of Chicago Press 1992), 316-20.

falsehoods.²¹³ But this is only part of what it meant at its origins, when it also served as a way of expressing the faith that the contest of ideas could occur peacefully. To be sure, the marketplace of ideas expressed a mechanism whereby true ideas would eventually defeat false ones; but it expressed as well the hope that, with the end of “monopolies” for favored beliefs and “protections” against ill-regarded ones, differing ideas would be able to circulate without sparking violence and disorder.

The second concept that is enriched by the analysis of the pacific theory undertaken here is that of public opinion. As noted above, the political thought of the first half of the nineteenth century was deeply concerned with the nature and significance of public opinion. Yet this sociological observation is seldom related, in modern scholarship, to the theoretical question of how to justify the freedom of the press faced by liberals of the time. Nevertheless, insofar as liberal-minded thinkers strove to portray the liberty of discussion as an instrument of stability as well as a precondition for the discovery of truth, they developed the argument that, once public opinion had emerged as a political force, abridgments of the expressive freedoms could only have a destabilizing impact. The political sociology of opinion that liberals of the era were elaborating thus fed back into foundational normative arguments about the meaning and value of freedom of expression in ways hitherto insufficiently explored.

Finally, seen against the intellectual backdrop that I have sketched here, John Stuart Mill’s avoidance of the pacific argument looks less like a mere oversight than a meaningful choice of one strand of liberalism over another, privileging a more moralistic liberalism which he believed was less tainted by instrumentalism. This turn away from the pacific school of thought links the younger Mill more closely to modern political theory; when contemporary political theory takes up the subjects of toleration and intellectual freedom, it likewise tends to ignore the problem of the conditions of

²¹³ See A. I. Goldman and J. C. Cox, “Speech, Truth, and the Free Market for Ideas,” *Legal Theory* vol. 2, no. 1 (1996): 1-32; Hélène Landemore, *Democratic Reason: Politics, Collective Intelligence, and the Rule of the Many* (Princeton: Princeton University Press, 2013), 54.

social peace and order. Consequently, beyond their historical significance, the nineteenth-century pacific theorists hold another title to our consideration, a theoretical one. For better or worse, they represent arguably the last sustained effort of British liberalism to address the question of how a society can be at once stable and intellectually free – a question which, in the face of concerns about the resurgence of extremism in various forms and doubts about the viability of traditional models of liberal pluralism and multiculturalism, is likely once again to become central to political theory and social science.

Chapter Two

James Fitzjames Stephen, John Stuart Mill, and the Victorian Theory of Toleration

In 1913, the last of the great Victorian historians, J.B. Bury, published *A History of Freedom of Thought*, a tour through the many fates of intellectual liberty from Antiquity to the dawn of the twentieth century.²¹⁴ Its rousing final chapter featured two heroes. One was, predictably, John Stuart Mill, who was a natural touchstone for a progressivist-rationalist of Bury's ilk. The other was James Fitzjames Stephen.²¹⁵

The inclusion of Stephen doubtless looks surprising to scholars today. How could Mill's greatest critic be seen as the co-protagonist of the late nineteenth century's contribution to the timeless struggle for free thought? Because he is best known as John Stuart Mill's adversary, and because Mill is often assumed to be representative of the liberalism of his era, Stephen has come to have a firm reputation as an illiberal and reactionary. He is depicted as urging "the necessity for authoritarian measures such as censorship," as fighting for the "enforcement" of "religious belief," as promoting "authority rather than freedom."²¹⁶ If Mill is the exemplary champion of freedom,

²¹⁴ Bury, *A History of Freedom of Thought* (London, 1913).

²¹⁵ Ibid., 245-7. See also 203.

²¹⁶ Andrew Pyle, "Introduction," to *Liberty: Contemporary Responses to John Stuart Mill*, xvii; James Munby, "Law, Morality and Religion in the Family Courts," *Ecclesiastical Law Journal*, vol. 16: 131-9, 133; A.W. Brown, *The Metaphysical Society: Victorian Minds in Crisis* (New York, 1947), 132.

So deeply has this image of Stephen penetrated that something of a cottage industry has arisen linking Stephen with Jonas Proast, the Oxford cleric who attacked Locke on toleration and sought to vindicate religious intolerance, as exponents of an enduring "illiberal" tradition. See e.g. Richard Vernon, *The Career of Toleration: John Locke, Jonas Proast, and After* (Montreal, 2007), ch. 5. Vernon makes the same connection in *Friends, Citizens, Strangers: Essays on Where we Belong* (Toronto, 2005), 160; and "Liberals, Democrats, and the Agenda of Politics," *Political Studies*, vol. 46 (1998): 295-308, 296. See also Steven Lecce, *Against Perfectionism: Defending Liberal Neutrality* (Toronto, 2008), e.g. 4-5; the selections in *Freedom: An Introduction with Readings*, ed. Nigel Warburton (London, 2001); Jeffrey M. Nelson, "Review Article: Ideology in Search of a Context: Eighteenth-Century British Political Thought and the Loyalists of the American Revolution," *The Historical Journal*, vol. 20 (1977): 741-9; and Mark Goldie, "The Theory of Religious Intolerance in Restoration England," in *From Persecution to Toleration: The Glorious Revolution and Religion in England*, eds. Ole Peter Grell, Jonathan I. Israel, and Nicholas Tyacke (Oxford, 1991), 331-68, 366.

Stephen would have been dismayed to find himself thus yoked to Proast; his verdict on his now-frequent bedfellow was not favorable: Proast was an "unfortunate author" who "was not in the least worth answering." See James Fitzjames Stephen, "Locke on Toleration," in *Horae Sabbaticae, Reprint of Articles from the Saturday Review*, 3 vols. (London, 1892), vol. 2, 159. This essay originally appeared in *The Saturday Review* in 1867.

Stephen is, we presume, emblematic of reaction.

This modern picture of Stephen is understandable. Judged from the perspective of twenty-first-century democratic egalitarianism, Stephen was in several respects a reactionary. He was skeptical of democracy and had little patience for any invocations of the value of equality that went beyond a minimalist legal notion.²¹⁷ More notoriously still, he was a bitter opponent of the women's rights movement.²¹⁸ On these fronts and others²¹⁹ he was in decisive practical disagreement with Mill, the latter being by any measure the more "liberal" of the two.

On the subject with which Bury was concerned, however, the author of the *History of Freedom of Thought* was nearer the truth than more recent scholars have been. On this issue – toleration and the liberty of thought and expression²²⁰ – the picture of an illiberal, authoritarian Stephen is misleading. Far from an advocate of censorship, persecution, or state enforcement of religious orthodoxy, Stephen had robust credentials as a liberalizer with regard to restraints on discussion, the press, and religious worship. He promoted "complete liberty of opinion" on religious matters; he was "most earnestly of opinion" that all vestiges of the "theory of persecution" should be banished from English law.²²¹ Even in his famous critique of Mill, *Liberty, Equality, Fraternity*, he was careful to

²¹⁷ Stephen, *Liberty, Equality, Fraternity*, ed. Stuart Warner (Indianapolis, 1993), 120-63. Stephen's skepticism of democracy was subtler and more measured than is usually recognized. Mill's own thought on democracy is quite complicated, but it is beyond the purview of this essay to tackle the vexed question of whether Mill counts as a democrat.

²¹⁸ *Ibid.*, 132-40.

²¹⁹ Another area of complete opposition between the two concerned the "religion of humanity," in which Mill placed great hopes and which Stephen despised as "sentimental"; *ibid.*, 48, 164-203.

²²⁰ Stephen, and Victorian usage more generally, treated the terms "toleration" and the cluster of liberty of discussion, thought, speech, expression largely interchangeably. (For example, Walter Bagehot gave the title "The Metaphysical Basis of Toleration" to an essay that concerned censorship of the secular press more directly than prohibition of religious sects, and Leslie Stephen described an Bailey's *Formation and Publication* which argued for the removal of all restraints on publication without paying any special attention to religious topics as "a vigorous argument on behalf of the widest possible toleration"; see Bagehot, "Metaphysical Basis of Toleration," in *CW*, vol. 14, 57-74; Leslie Stephen, *The English Utilitarians*, vol. 2, 339. All citations to Bagehot will use this edition.) Consequently, for the sake both of faithfulness to the sources and of literary convenience, I use these terms synonymously, except where explicitly noted.

²²¹ Stephen, "Blasphemy and Blasphemous Libel," *Fortnightly Review*, vol. 35 (Mar. 1884): 289-318, 318; "The Laws of

note that he and Mill were on the same side of the contest between persecution and toleration. He bookended the chapter “On the Liberty of Thought and Discussion” by “emphatically” clarifying that in practice he was very close to Mill and the liberalism for which Mill stood.²²²

In addition to the endorsements of toleration throughout his voluminous writings, Stephen took action on behalf of the cause. Among other activities, he served as defense counsel in the trial for heresy of a clergyman who had contributed to a controversial collection of broad-church essays²²³; he pushed for and drafted a bill for the repeal of the blasphemy laws;²²⁴ and he agitated for an end to the religious tests that kept non-Anglicans from being eligible for appointments at Oxford and Cambridge.²²⁵ Stephen was a vocal proponent of reform to purge the English law of those statutes that were grounded in “the principle of persecution,” and he was incensed at the insouciance of his compatriots in allowing such laws to remain on the books.²²⁶ So when his brother Leslie Stephen wrote that Fitzjames “agreed with Mill, as he admits, in regard to every actual question of the day,” he was not simply trying to protect Fitzjames’s legacy as a liberal; he was also giving voice to an important truth about his brother’s life and thought.²²⁷

The goal of this chapter is to revive this “tolerant” Stephen, the one whom Bury and Leslie would have recognized but whom we have forgotten today.²²⁸ While, as we will see, his support for

England as to the Expression of Religious Opinions,” *Contemporary Review*, vol. 25: 446-75, 474, 468.

²²² “I object rather to Mr. Mill’s theory than to his practical conclusions”; “I do not object to the practice of modern Liberals. Under great difficulties they have contrived to bring about highly creditable results...”; *ibid.*, 24, 67. And see the comment on religious liberty on 47: “In the practical result I agree nearly, though not quite.”

²²³ See e.g. *Essays and Reviews: The 1860 Text and Its Reading*, eds. Victor Shea and William Whitla (Charlottesville, 2000).

²²⁴ The bill is reprinted in W.A. Hunter, *The Blasphemy Laws: Should They Be Abolished?* (Plymouth, 1884).

²²⁵ K.J.M. Smith, *James Fitzjames Stephen: Portrait of a Victorian Rationalist* (Cambridge, 1989), x.

²²⁶ Stephen, “Blasphemy,” 317.

²²⁷ Leslie Stephen, *The Life of Sir James Fitzjames Stephen: A Judge of the High Court of Justice* (London, 1895), 327.

²²⁸ The exception to the general neglect of this side of Stephen is K.J.M. Smith’s biography *James Fitzjames Stephen: Portrait of a Victorian Rationalist*, 168-77. Importantly, Smith highlights Stephen’s support for the “liberal” position on some

toleration and expressive liberty was not without limitations and qualifications, Stephen advanced a nuanced, multifaceted account of the benefits that modern societies derived from following these liberal principles. To present this account, I draw on a much wider range of texts than is customary in scholarship on Stephen, going beyond *Liberty, Equality, Fraternity* to consider (among others) his legal and jurisprudential compositions; his favorable early reviews of *On Liberty*; his journalism about contemporary problems of toleration; and his writings on the history of political thought. The elaboration of Stephen's constructive case for toleration and freedom of the press is the subject of section one of this chapter.

Stephen's support for toleration did not mean that he was merely a reproduction of Mill, however. True, at the level of practice and policy, the chasms between the two of them were much larger on other issues. Yet Stephen was hostile to Mill's "theory" of liberty of discussion in various ways. We must therefore explain why a thinker so committed to the cause objected to many aspects of the most famous contemporary rendition of the philosophy of toleration, and how he could have done so without undercutting his own positive case for toleration. Section two provides such an explanation. This section shows that Stephen's critical writings on contending theories of toleration were not intended – or understood in his time – as articulations of a reactionary or illiberal position. Instead, they were devoted to countering what Stephen regarded as two corruptions of a true theory of toleration: the intrusion of principles of abstract right, and the expansion of the theory to include a cluster of problematic philosophical and policy positions.

This chapter, therefore, offers the first comprehensive reconstruction of Stephen's thought

current issues such as repeal of the Test Acts, and he is perceptive in depicting the gap between a sometimes "ferocious" rhetoric and a substantive liberalism. He also notes Stephen's desire to stay faithful to Benthamite utilitarianism in his thinking about toleration. On these fronts my interpretation follows in his tracks. However, coming as it does in the midst of a biography and not an in-depth study of these topics, his discussion naturally does not aspire to comprehensiveness conceptually. This essay therefore goes beyond Smith in attempting to give a full analysis of Stephen's positive reasons for supporting toleration, as well as of the multiple planes on which Stephen lodged objections to contending intellectual-libertarian visions. Finally, while Smith attends to Stephen's relationship with Mill, he does not integrate Stephen into a reconstruction of the broader context of Victorian thought on toleration.

about toleration and intellectual freedom. This reconstruction is significant for two reasons. First, given that Stephen is often pressed into service as an exemplar of intellectual-religious illiberalism, it behooves us to correct this misconception and replace it with a more accurate picture, especially since doing so reveals a sophisticated and serious attempt to theorize the value and scope of toleration. Second, contrary to what many scholars assume, *On Liberty* was not the Victorian era's last word on the intellectual-expressive liberties, and Stephen's oeuvre offers an excellent point-of-entry into the extraordinary but little-known burst of theorizing about freedom of discussion that took place in second half of the nineteenth century in Britain. The mid-century period saw the consolidation of the freedoms of discussion and of the press in Britain, and so we should not be surprised to find a massive effort among mid- and late-Victorian authors to explain the causes, consequences, and meaning of the then still-novel triumph of toleration. Stephen, as we will see, has every bit as strong a claim to be considered representative of this intellectual climate as Mill does. By combining an analysis of the theoretical bases of Stephen's support for toleration with glimpses into the shape of Victorian thought more broadly, this chapter breaks new ground both conceptually and contextually.

1) Stephen on the Grounds of Toleration

Although much of it is unknown today, Stephen produced a stunning output in political theory as in other domains of thought.²²⁹ As a result, even his *defense* of toleration, which has been presumed not to have existed at all, occupied a considerable mass of pages and was spread across many works. This section, therefore, should be understood as a map of the major points of his

²²⁹ Stephen's maniacal addiction to essay-writing is well captured in a letter of 9 Dec. 1869 in which he depicted himself as "so far giv[ing] way to human weakness as to write an article"; *The Writings of James Fitzjames Stephen*, University Library, Cambridge, Add. MSS. 7349 (microfilm from Columbia University). In addition to his many books, he was a voluminous producer for Victorian journals and reviews. For one of these outlets alone, *The Pall Mall Gazette*, he wrote over a thousand articles in an eight-year period; James Colaiaco, *James Fitzjames Stephen and the Crisis of Victorian Thought* (New York, 1983), 6.

positive case for toleration, rather than as an exhaustive account of his views.

While Stephen downplayed the systematicity of his thought,²³⁰ four broad lines of argument for toleration emerge from his oeuvre.

a) Peace and the Counterproductiveness of Persecution

The first was what I have called the *pacific* theory of toleration and freedom of discussion. A principal component of Stephen's backing for intellectual freedom was the moral he had learned from the authors in chapter one. "A perfectly free press is one of the greatest safeguards of peace and order," he affirmed; persecution of opinions was "quite out of the question" because its implementation would either be ineffectual or "absolutely destructive and paralysing."²³¹ In direct opposition to a standard Tory talking-point, which was that the excesses of the French Revolution proved the dangers posed by an unshackled press, Stephen agreed with radical and Whig writers who blamed the *restrictions* on public discussion in *ancien régime* France for the revolutionary chaos.²³² The French Revolution was a lesson in the dangers not of a free but of an unfree press: in the eighteenth century "arbitrary power" had misdirected the "French intellect" away from its natural "channel[s]" and thereby brought society to the brink of upheaval.²³³ Sharply rebuking the paternalist Toryism that charged the liberties of thought and discussion with undermining the foundations of society, Stephen found it evident that the rise of liberalism, including its central norm of free

²³⁰ He denied having a "general doctrine" on the matter; Stephen, "Laws of England," 447.

²³¹ JF Stephen, "Journalism," *Cornhill Magazine*, vol. 6 (July 1862): 52-63, 57; *Liberty*, 51.

²³² See e.g. James Mill, "Liberty of the Continental Press," *Edinburgh Review*, vol. 25 (June 1815): 112-34.

²³³ JF Stephen, "Burke and de Tocqueville on the French Revolution," in *Horae Sabbaticae*, vol. 3, 169. This view was much in keeping with the traditional Whig stance of favorability toward the French Revolution; see e.g. Leslie Mitchell, *The Whig World, 1760-1837* (London, 2005), ch. 5, and chapter one of this dissertation.

discussion, had bolstered the cause of order and stability.²³⁴ The old nightmare of demagogues using the press to dupe the multitude into orgies of destruction had been, in Stephen's eyes, discredited. It was more accurate to see the organs of the press as the "servants of the public" by which the necessary debate and discourse of the nation was carried out.²³⁵ As W.E.H. Lecky, the Anglo-Irish historian and philosopher who was ideologically and personally close to Stephen, put it, "it is a deep-seated conviction of English political life" that opinions "are never so dangerous...as when their free expression is suppressed."²³⁶ Stephen, whose pride in all things English could border on bellicosity,²³⁷ was not likely to repudiate this central plank of British political identity.

Not only did restrictions on expression compromise domestic peace; worse still, they increased the risk of instability without any gain for the beliefs on behalf of which these restrictions and penalties were imposed. Reviewing the history of the criminalization of religious belief and expression, Stephen judged that a "strong" argument against "prosecutions" for heterodoxy was supplied by the "obvious" fact "that they did not check the open growth of skepticism, or preserve the institutions which they were intended to defend."²³⁸ "Civil war, legal persecution, the Inquisition, with all their train of horrors," were not efficacious means for changing hearts and minds.²³⁹ The normal armaments of intolerance, wrote Frederick Pollock, the great jurist, historian, and admirer of

²³⁴ "Political institutions throughout the whole of Europe and America are far stronger now than they were before the [French] Revolution"; JF Stephen, "De Maistre's 'Principe Generateur,'" in *Horae Sabbaticae*, vol. 3, 304. Hence Lecce is incorrect in asserting that Stephen thought these liberties compromised social order; see Lecce, *Against Perfectionism*, 64.

²³⁵ Stephen, "Journalism," 53.

²³⁶ Lecky, *Democracy and Liberty*, 2 vols. (London, 1896), vol. 2, 402. For a still-illuminating if one-sided treatment of Lecky's and Stephen's political thought together, see B.E. Lippincott, *Victorian Critics of Democracy* (Minneapolis, 1938).

²³⁷ For Stephen's views on England and Englishness, see Julia Stapleton, "James Fitzjames Stephen: Liberalism, Patriotism, and English Liberty," *Victorian Studies*, vol. 41 (1998): 243-63.

²³⁸ Stephen, "Laws of England," 471.

²³⁹ Stephen, *Liberty*, 69.

Stephen, “do not work”; rather, “the inutility of legal persecution” was a manifest truth.²⁴⁰ To Stephen and likeminded analysts of Britain’s new culture of free religious expression, it was largely due to this experience of their ineffectiveness that persecutory laws had fallen into “hopeless and direct opposition to the general current of principle and opinion in the present day.”²⁴¹

Befitting an age obsessed with the themes of evolution, progress, and the “historical method” in the social sciences,²⁴² observations about the destabilizing and inefficacious character of measures of intolerance tended to be understood not as universal laws but rather as empirical regularities specific to modern societies. The bulk of Victorian liberals – including, of course, JS Mill²⁴³ – presented the “age of discussion” in which they lived as the outcome of a long historical trajectory by which members of “progressive” (as opposed to “stationary”) societies developed the intellectual and moral qualities that made it possible for them to tolerate difference peacefully and profit from public debate. “The strongest advocates both of liberty and toleration may consistently hold that there were unhappy ages before either became possible,” asserted Walter Bagehot, the great political writer and editor of the *Economist*.²⁴⁴ Fitzjames’s brother likewise gave a paradigmatic statement of this Victorian orthodoxy: “toleration presupposes a certain stage of development, moral and intellectual. In the ruder social order, toleration is out of the question for familiar

²⁴⁰ Pollock, “The Theory of Persecution,” in *Essays in Jurisprudence and Ethics* (London, 1882), 166. Pollock was one of the most influential legal and political thinkers of the generation after Stephen.

²⁴¹ Stephen, “Laws of England,” 467. See also his closing remarks as defense counsel in the heresy trial of an Anglican clergyman: “Consider, my lord, the stupendous folly and cowardice of such legislation. You can indeed shut the mouths of the clergy, but can you shut the mouths of the laity? In this age and nation are we to expect that either Christianity or the Bible will be free from criticism? You can silence divines, but can you silence literature? Can you silence history? Can you silence science?...You cannot arrest discussion”; Stephen, *Defence of the Rev. Rowland Williams, D.D., in the Arches’ Court of Canterbury* (London, 1862), 324.

²⁴² See e.g. Jones, *Victorian Political Thought*, chs. 2-3; J.W. Burrow, *Evolution and Society* (Cambridge, 1966); Jeffrey Paul von Arx, *Progress and Pessimism* (Cambridge, MA, 1985).

²⁴³ Mill, *On Liberty*, 224.

²⁴⁴ Bagehot, “The Metaphysical Basis of Toleration,” 62. Bagehot gave a classic extended statement of this whole outlook in his *Physics and Politics*.

reasons.”²⁴⁵ Once this stage has been reached, however, “toleration becomes an essential condition” and “persecution” of all sorts is then an “anachronism,” at once “impolitic” and “ineffectual.”²⁴⁶ The historical inflection of the theses about persecution’s irrationality and unconductiveness to peace and stability made them prime elements for the growth of an overlapping consensus in favor of toleration, for the historical character of the assessment of the fitness of societies for intellectual freedom made it easier on committed believers of once-persecuting faiths (especially the Catholic Church) to accept the recent consensus on toleration without having to rebuke their churches for past misdeeds.²⁴⁷

In keeping with the wide purchase of this historical turn of mind, similar ideas found their way into Fitzjames Stephen’s thinking on toleration. “In this country and in this generation the time for prosecuting political libels has passed, and does not seem likely to return within any definable period”; “what can and ought to be said, with as much emphasis as may from time to time be required, in favour of toleration *in our own age of the world*, is that the religious questions which agitate Western Europe are perfectly capable of being discussed without violence.”²⁴⁸ In “a rich and intelligent country” such as modern England the claims that persecution on the grounds of belief served the cause of stability or aided in the propagation of true beliefs were no longer plausible.²⁴⁹

This historicized explanation for the pacific properties of free discussion and the

²⁴⁵ Leslie Stephen, “The Suppression of Poisonous Opinions,” in *Liberty: Contemporary Responses to John Stuart Mill*: 409-43, 428. The essay was originally published as two articles in *The Nineteenth Century* in 1883.

²⁴⁶ Ibid., 438. Fitzjames’s friend James Anthony Froude offered a similar bifurcation of history into an earlier period when “divided opinions were then dangerous” and a present when “the time is past for repression”; see Froude, “A Plea for the Free Discussion of Theological Difficulties,” *Fraser’s Magazine*, vol. 68, no. 405 (Sept. 1863): 277-91, 280, 290.

²⁴⁷ Perhaps the best example of this disposition in England was Thomas Arnold, a convert to Catholicism and the brother of the poet Matthew Arnold; see e.g. his essay “Mill on Liberty” in *Liberty: Contemporary Responses to John Stuart Mill*, 159-83. In France the liberal Catholic politician Charles Forbes René de Montalembert exemplified this viewpoint.

²⁴⁸ Stephen, *A History of the Criminal Law of England*, 3 vols. (London, 1883), vol. 2, 376; “Locke on Toleration,” 172. My italics.

²⁴⁹ JF Stephen, “Journalism,” 57.

ineffectiveness of persecution permitted Stephen to give his endorsement to a latitudinarian conception of the scope of free political, religious, and moral discussion *for current practice* while circumscribing his claims at the theoretical level; this pacific view did not, for instance, require him to invoke a notion of pre-political or natural rights or deny that it was within the state's rightful power to regulate speech in order to preserve the peace. The importance of this theoretical circumscription will become clear later, when we turn to Stephen's hostility to systems of natural right and his self-conscious desire to remain within the Erastian tradition. For now, what is significant is that Stephen believed that, as a matter of practice, in the advanced nations (by which he seems to have meant England, the United States, and France²⁵⁰) the government's task of preserving order did not require that it actively control opinion; in these societies tranquility could be trusted to the course of discussion.²⁵¹ This was in contrast to both long-ago and far-away places: hence it was through the historical example of the onset of Christianity in Rome and the colonial example of the clashes which a "great religious reformer" in India might incite that Stephen illustrated the justifiability of the state repressing certain forms of expression in situations of emergency.²⁵² It was, of course, possible that such crises would reappear in England, and if they did then abridgments of the right of expression might, Stephen held, prove necessary. But, given the range of factors that pointed to free discussion's reinforcement of civil peace in the here and now, repression would, as a rule, be unwise and unwarranted.²⁵³ In countries like England, where infringements on the press

²⁵⁰ In including France with the great Anglophone powers Stephen differed from Bagehot, who judged the French to be unequipped for "government by discussion"; Bagehot, "Letters on the French *Coup d'État* of 1851," in *CW*, vol. 4, 29-84.

²⁵¹ On this front Russell Kirk's "conservative" reading of Stephen is misleading. While, as we will see in section two, Stephen was insistent that progress did not mean the disappearance of force from the modern world, Kirk was wrong to impose on Stephen's thought an either/or dichotomy between "force" and "discussion" as the guarantors of order; see Kirk, *The Conservative Mind from Burke to Eliot* (Chicago, 1960), 340-53.

²⁵² Stephen, *Liberty*, 61-4.

²⁵³ On this point his contrasting assessments of two early-modern monarchs is instructive. Elizabeth I, under whom the state of the nation appeared threatened by enemies foreign and domestic, adopted a policy of "worldly and practical"

were more likely to produce disturbances than accepting its freedom, it was best that rulers resist the impulse to persecute the “thought that they hated.”²⁵⁴

Apart from these issue of peace and inefficacy, there were other grounds for rejecting the devices of persecution and censorship. Even if a modern government were somehow able to maintain social order despite foregoing the pacific advantages of a free press, the damage inflicted on other areas of human life was too great.²⁵⁵ While Stephen disclaimed the need to elaborate on the nature of these damages because they were “well known” and “established beyond the reach of controversy,” he did in fact write at length about other justifications for freedom of expression.²⁵⁶

Two of these justifications correspond to the two clauses at the end of a crucial sentence from the article on Locke which will be the subject of section 2(a): “the use of violence [to resolve religious disputes] would do unmixed harm, [1] not only to the cause of truth, but also [2] to the development and improvement of the whole character of mankind.”²⁵⁷

b) Truth

Let us take the first clause first. The epistemic defense of the liberties of thought and

intolerance, persecuting no doctrines but those which “disturbed, or were supposed to be likely to disturb, the public peace.” While Stephen did not endorse her methods, he applauded Elizabeth because “no one in this reign suffered merely for his opinions,” and because she acted in a repressive manner only under great duress. James I, however, persecuted in the absence of any emergency threatening “the temporal prosperity of the nation” and only for the sake of “securing [dissenters] orthodoxy,” and therefore Stephen did not hesitate to call his persecutions “shameful”; Stephen, “Laws of England,” 454.

²⁵⁴ The expression is taken from America’s greatest admirer of Stephen, Oliver Wendell Holmes. For an account of Holmes’s debts to Stephen, see Richard Posner, “Introduction” to *The Essential Holmes*, xx-xxii. In keeping with the blindness to this side of Stephen’s thought, Posner does not consider the likelihood that Holmes’s famous defense of free speech owed a debt to Stephen.

²⁵⁵ Stephen, “Laws of England,” 474; *Liberty*, 35.

²⁵⁶ Stephen, “Laws of England,” 447; “Mr. Mill on Political Liberty [1],” *Saturday Review*, vol. 7 (12 Feb. 1859): 186-7, 186. Two articles entitled “Mill on Political Liberty” are included by Andrew Pyle in his useful collection, which I have cited here on several occasions, though Pyle crucially fails to identify them as Stephen’s. He was apparently unaware that this positive review, published anonymously, came from the same pen that would go on to attack *On Liberty* a decade-and-a-half later.

²⁵⁷ Stephen, “Locke on Toleration,” 172. The numbering is my own.

discussion is most familiar from *On Liberty*, but Mill's presentation of it was far from idiosyncratic.²⁵⁸ Though it may come as a surprise to those who have encountered only the standard reading of him, Stephen subscribed to the "Liberal" piety that "the concession of a legal right of private judgment to all mankind is highly beneficial to the interests of truth."²⁵⁹ In a quintessentially Victorian manner, Stephen envisioned a regime of free public discussion as the engine for "the most immense progress in every form of civilization" because it was the sole form of social ordering in which the various kinds of evidence and argument could be marshaled and tested.²⁶⁰

While Stephen's objections to Mill will be dealt with in section 2(b), this is an opportune moment to emphasize one feature of those criticisms: they were not anti-rationalist, that is, they were not founded on the denial that human beings were capable of reaching the truth through the exercise of reason. To see this, we need only compare Stephen's avowal of the epistemic value of public discussion with the assault on Mill of a genuine anti-rationalist, the well-named clergyman R.W. Church. Church believed that the claims of *On Liberty* about the alliance between freedom and truth were fundamentally inaccurate.²⁶¹ For Church, it was simply wishful thinking to posit any link between truth and the outcome of argument or deliberation, for the determinants of the latter were unrelated to the perception of truth. Those who boasted of the "intrinsic power" of true beliefs to triumph in a fair field neglected the fact that "being able to argue and refute is, at any given time, a

²⁵⁸ It is best to think of this strand of *On Liberty*, as the Positivist historian and publicist Frederic Harrison did, less as an "original" argument than a "masterpiece" of recapitulation, "condens[ing]...all the best" of the common fund of wisdom on the topic; Harrison, *Tennyson, Ruskin, Mill, and Other Literary Estimates* (London, 1899), 293. Ursula Henriques places the moment at which the epistemic argument assumed cultural centrality in the 1780s; see Henriques, *Religious Toleration in England, 1787-1833* (Toronto, 1961), 24.

²⁵⁹ Stephen, "Dr. Newman and Liberalism," *Saturday Review*, vol. 19 (24 June 1865): 768-70, 770.

²⁶⁰ Stephen, "Mr. Gladstone and Sir George Lewis on Authority," *The Nineteenth Century*, vol. 1 (Apr. 1877): 270-297, 291.

²⁶¹ "The saying that truth has nothing to fear from unlimited liberty is just as much as 'pleasant falsehood' as the dictum that it has nothing to fear from persecution"; Church, "Mill on Liberty," in *Liberty: Contemporary Responses to John Stuart Mill*, 249. The essay originally appeared in the conservative *Bentley's Quarterly Review* in 1860.

matter seemingly of chance.”²⁶² These profoundly skeptical sentiments no more belonged to Stephen than they did to Mill or the conventional liberal who trusted that “arguments always tell for truth as such, and against error as such.”²⁶³

The contrast with Church brings out another sense in which Stephen’s epistemic optimism aligned him with Mill. Not only did it help to underwrite his support for freedom of discussion; it was also, as Stephen himself was always willing to admit, grounded in a foundational Millianism learned from the *System of Logic*, which was at the zenith of its influence during Stephen’s young adulthood.²⁶⁴ The *Logic* taught Stephen to reject “metaphysical” and “intuitionist” ways of thinking – that is, theories which alleged that, *via* some kind of “moral sense” or body of “innate ideas,” human beings possessed a special faculty for the perception of truth that was independent of experience.²⁶⁵ For Stephen, the true Mill would always be this Mill, the Mill of the 1840s who had established empiricist epistemology; proved the illegitimacy of all *a priori* truth-claims; and demonstrated the need to disavow beliefs based on a source of authority which was not susceptible to rational, evidence-based scrutiny.

Chief among the objects which Mill’s empiricism was meant to attack was Christian theology, especially insofar as it was enunciated by clergymen who asserted that their dogmas were immune to critical examination.²⁶⁶ Stephen joined in this attack. Taking his corpus in its totality, Stephen’s bitterest enemies were not Mill or any other of the more eager and optimistic species of

²⁶² Ibid., 249. Unlike in England, in France this skeptical position was represented not only on the religious right but even within liberalism through the work of Destutt de Tracy; see Welch, *Liberty and Utility*, 62.

²⁶³ Bagehot, “The Metaphysical Basis of Toleration,” 60.

²⁶⁴ Stephen, *Liberty*, 5; Smith, *Stephen, Victorian Rationalist*, 45; Zink, *Leslie Stephen* (New York, 1972), 31.

²⁶⁵ For Mill on the anti-intuitionist purpose of the *Logic*, see *Autobiography*, 233: “The notion that truths external to the mind may be known by intuition or consciousness, independently of observation and experience, is, I am persuaded, in these times, the great intellectual support of false doctrines and bad institutions. By the aid of this theory, every inveterate belief and every intense feeling, of which the origin is not remembered, is enabled to dispense with the obligation of justifying itself by reason, and is erected into its own all-sufficient voucher and justification. There never was such an instrument devised for consecrating all deep seated prejudice.”

²⁶⁶ Richard Reeves, *John Stuart Mill: Victorian Firebrand*, 167-9.

liberalism, but those who would reassert traditional (usually clerical) forms of authority over speech and belief.²⁶⁷ Against the proponents of religious authority whose dogmatic certainty led them to dismiss the principle of free inquiry and who relied on an “intuitionist” epistemology for the sake, as he saw it, of skirting the demand that they provide evidence for their views, Stephen countered that the truth could only be arrived at through the provision of “good evidence” within the “pale of discussion.”²⁶⁸ In this shared hostility to the various non-evidential intellectual systems of his day and their authoritarian implications, Mill and Stephen were, and understood themselves to be, allies in Victorian England’s most basic intellectual conflict. They were both apologists for the “age of discussion,” and they both anchored their support in empiricism, wariness of the imposition of religious dogma, and confidence in the human capacity to attain truth through observation and critical reasoning.

The Victorian conviction about the truth-revealing property of free discussion was closely allied with another claim, which could be epistemological, psychological, or ethical (or all together) depending on the context of its use. This was the claim that toleration and a free press were necessary conditions for confidence in one’s beliefs.²⁶⁹ As Mill put it: “Complete liberty of contradicting and disproving our opinion, is the very condition which justifies us in assuming its truth for purposes of action.”²⁷⁰ Leslie Stephen, in an article which Fitzjames singled out as

²⁶⁷ See e.g. Stephen, “Necessary Truth,” *Contemporary Review*, vol. 25 (Dec. 1874): 44-73.

²⁶⁸ Stephen, “On Certitude and Religious Assent,” *Fraser’s Magazine*, vol. 5 (Jan. 1872): 23-42, 30. His principal targets on this front were the Catholics John Henry Newman and W.G. Ward. In reaction against their indifference to the normal canons of evidence and the need to furnish reasons for their beliefs Stephen counted himself among the “many” who “think that religious people are often dishonest upon principle”; “Certitude,” 37.

It is indicative of the extent to which the combat against intuitionist modes of thought dominated his thinking that he offered “the question whether people have or have not innate ideas” as the example of an intellectual controversy which, while appearing “purely scientific,” had a profound bearing on moral and social life; *Liberty*, 53.

²⁶⁹ David Edwards, discussing Mill, describes this as the idea that “toleration is the social condition of certainty”; Edwards, “Toleration and Mill’s Liberty of Thought and Discussion,” in *John Stuart Mill’s Social and Political Thought, Critical Assessments*, ed. G.W. Smith, 4 vols., (London, 1998), vol. 2, 346.

²⁷⁰ Mill, *On Liberty*, 231.

representing his own views, gave a hearty assent to Mill's statement, declaring it a hallmark of "genuine Liberalism" to recognize "that a willingness to hear every side of every question is the condition and the consequence of vigorous faith."²⁷¹ Fitzjames similarly endorsed this tenet of liberal social epistemology: on any issue of importance "it is essentially necessary to know what was said on both sides. So long as one side only can be heard, you can never be quite sure that you fully understand the case at issue."²⁷² It was a "principle of the utmost importance and of universal application...that free inquiry is the great, and indeed almost the only possible guarantee for the truth of any doctrines whatever. Persecution destroys this guarantee, and is therefore unfavourable to any intelligent and real belief in the truth of any creed whatever."²⁷³ Only the fullest toleration could supply the legal-social framework requisite for overcoming the problems of one-sidedness in one's thinking and of unjustified confidence in one's beliefs.

Stephen, like many liberals in the period, was not content merely to point to benefits at the societal level; he sought to connect the question of the appropriate national policy on the regulation of opinion to a prescription for the ethical individual. Thus he went on to specify that an epistemically robust regime of free discussion called for certain moral dispositions among citizens. Chief among these was what we might call a fallibility-recognizing state of conviction.²⁷⁴ This was certainly not a position of deep philosophical skepticism (Hume was quite unpopular among Victorians).²⁷⁵ Nor was it an unprincipled indifference toward public affairs or great questions; the imploring of grand convictions makes a ceaseless din through the social thought of the second half

²⁷¹ Leslie Stephen, "Social Macadamisation," *Fraser's Magazine*, vol. 6 (Aug. 1872): 150-68, 165; Stephen, *Liberty*, 30.

²⁷² Stephen, "Voltaire as a Theologian, Moralist, and Metaphysician," in *Horae Sabbaticae*, vol. 2, 212-3.

²⁷³ Stephen, "Locke on Toleration," 171.

²⁷⁴ Jeremy Waldron has given this state the compelling label of "committed open-mindedness;" Waldron, "Mill and the Value of Moral Distress," in *Mill's Social and Political Thought*, vol. 2, 365

²⁷⁵ On the Victorian discomfort with skepticism, see Walter Houghton, *The Victorian Frame of Mind*, 13-5; Melvin Richter, *The Politics of Conscience: T.H. Green and His Age* (Cambridge, MA, 1964), 168.

of the nineteenth century, to which Stephen was not averse to contributing.²⁷⁶ It was, rather, an attitude of studied awareness of one's own intellectual limitations, and of the close intermixture of truth and error in human affairs, which was to be maintained in conjunction with an earnest espousal of one's beliefs. Much of *On Liberty* is a jeremiad against the arrogant "assumption of infallibility,"²⁷⁷ and Stephen similarly preached a gospel of epistemic modesty. He put the point in colorful fashion:

...every assertion which we make should be coupled either expressly or tacitly with some such qualification as this: – 'As at present advised, subject to further and better instructions, and upon the assumptions heretofore stated, I am of opinion ---.' The opinion should further be dated, both in time and place, so as to show that a variation on these matters might affect its truth.²⁷⁸

Stephen named this desired mindset "moderation," and he judged that citizens' realization of this moral psychology was a precondition for a society's achievement of the liberties of speech and opinion.²⁷⁹ As with other elements of his support for toleration, the thought that "moderation" was the necessary correlate at the personal level to a political-legal system of toleration would become almost a platitude of the Victorian era, with thinkers like Lecky, Pollock, and the influential Scottish philosopher D.G. Ritchie arguing in terms similar to Stephen's that the spread of a "degree of skepticism" about one's own possession of the truth was an indispensable ingredient in a lasting order of toleration.²⁸⁰

²⁷⁶ He bemoaned as "the great characteristic danger of our day" the "growth of this quiet ignoble littleness of character and spirit"; Stephen, "Liberalism," *Cornhill Magazine*, vol. 5 (Jan. 1862): 70-83, 81. The period's classic imploration of a strong commitment to principle is John Morley's *On Compromise* (1874), and it is no coincidence that Morley went on to become something of the spokesman for Millianism in the last quarter of the century: *On Liberty* needs to be read as, among other things, an entry into the copious catalogue of texts entreating Englishmen to greater earnestness and adherence to principle in their beliefs.

²⁷⁷ Mill, *On Liberty*, 233.

²⁷⁸ Stephen, "Necessary Truth," 73.

²⁷⁹ Stephen, *Liberty*, 68.

²⁸⁰ Pollock's "Theory of Persecution"; Ritchie *Natural Rights: A Criticism of Some Ethical and Political Conceptions* (London, 1895), ch. 8; Lecky, *History of the Rise and Influence of the Spirit of Rationalism in Europe*, revised edition, 2 vols. (London, 1880), 9-10. Lecky was here quoting the great Whig politician Charles James Fox. C.L. Ten has made a similar point

Stephen's blunt assertion in *Liberty, Equality, Fraternity* that "skeptical arguments in favour of moderation about religion are the only conclusive ones" for toleration needs to be read in light of the foregoing.²⁸¹ As this section shows, Stephen assuredly did not believe that there were no other arguments on behalf of toleration: he believed that there were a series of justifications for toleration, that a policy of toleration was normatively overdetermined in his day and age. While Stephen was critical of others for confusing normative and descriptive claims, his writing is fraught with these confusions, and this sentence is, I submit, an instance of this confusion.²⁸² His meaning here is that without a certain critical distance on one's beliefs and a corresponding appreciation of the limits of the human intellect even the most liberal legal code could be only a dead letter.²⁸³ This reading fits well with Stephen's belief that the decline of traditional religious belief was insufficient on its own for the realization of toleration; he feared that a "practical majority" of "unbelievers" lacking in the virtue of moderation would "legislate against believers in a way hardly distinguishable from persecution."²⁸⁴ For Stephen, there could be no religiously and intellectually free society without the prevalence of the proper moral-intellectual disposition, a disposition that did not coincide with any specific content of beliefs but which instead dictated an appropriate manner of holding or interacting with one's beliefs, whatever they were.

Stephen's ideas on the moral psychology that accompanied toleration did not stop here. If the success of tolerant legislation was dependent on the just-described moral qualities obtaining, toleration *qua* political system contributed in its turn to the moral betterment of those who lived

more recently; Ten, "The Liberal Theory of the Open Society," in *The Open Society in Theory and Practice*, eds. Dante Germino and Klaus von Beyme (The Hague, 1974), 146-7.

²⁸¹ Stephen, *Liberty*, 68.

²⁸² For Stephen's rebukes of others for this fault, see *Liberty*, 22, 46. Henry Sidgwick, the greatest late-Victorian philosopher, griped of this problem in his write-up of Stephen's book; see Sidgwick, "Review of *Liberty, Equality, Fraternity*," *The Academy*, vol. 4 (Aug. 1873): 292-4, 293.

²⁸³ See e.g. *Liberty*, 67; "De Maistre's Minor Works," in *Horae Sabbaticae*, vol. 3, 285-6; *Criminal Law*, vol. 2, 496.

²⁸⁴ Stephen, *Criminal Law*, vol. 2, 497.

under it. This glimpse at the psychological basis of a working liberal legal order thus brings us to another set of benefits glimpsed in the above-quoted sentence from the essay on Locke: toleration furthered not only the cause of truth but *the development and improvement of character*.

c) Morality

In addition to their epistemic costs, persecutory policies inflicted moral damages. The second half of the nineteenth century witnessed an outpouring of concern for the virtues of sincerity and truthfulness, and the literature on toleration reflected this concern. One of the chief charges levelled against state intolerance was that it weakened the moral fiber of society by attacking these values. Far from the insouciance about these virtues evinced by an older strain of Tory Anglicanism exemplified by an author like Robert Southey,²⁸⁵ Victorians who felt the burdens of judgment weighing heavily on them in an age of uncertainty came to place the forthright disclosure of one's convictions in the front rank of moral obligations.²⁸⁶ For Leslie Stephen, truthfulness was the preeminent *modern* form of moral excellence – “the virtue of philosophic truthfulness is only now obtaining recognition” – and the newfound consensus “that persecution is a blunder” was to be understood as the “external” manifestation of society's still not yet “adequate perception” of the “internal rule” of “truthfulness in the highest sense.”²⁸⁷ Policies of toleration and intellectual freedom were, to Leslie, the political side of a larger project for ingraining ideals of earnestness and honesty in English society: “It is not only wrong to burn a man on account of his creed, but it is right to encourage the open avowal and defence of every opinion sincerely maintained. Every man

²⁸⁵ For Southey, “the sincerer, the more religious” a Catholic was, the worse he was morally; see e.g. Southey, “On the Catholic Question, 1828,” in *Essays, Moral and Political*, vol. 2, 376.

²⁸⁶ See Houghton, *Victorian Frame of Mind*, 425.

²⁸⁷ Leslie Stephen, *The Science of Ethics* (London, 1882), 204-5. Lecky strongly agreed about the modern provenance of this virtue: see Lecky, *The History of European Morals from Charlemagne to Augustus*, 2 vols. (New York, 1876), vol. 1, 143-6, 430-1; *History of Rationalism*, vol. 1, 399.

who says frankly and fully what he thinks is so far doing a public service.”²⁸⁸ “Toleration,” he summed up, “is a necessary correlative to a respect for truthfulness.”²⁸⁹ The great liberal intellectual and politician John Morley gave a vivid articulation of this sentiment in his depiction of insincerity as *self-persecution*, and a kindred spirit animated Sidgwick’s writings on the ethics of religious expression and church membership.²⁹⁰

These ideas about the foundational value of sincerity to ethical life resonated with Fitzjames.²⁹¹ Membership in the Cambridge Apostles, an exclusive intellectual secret society among whose other mid-Victorian members Sidgwick and Pollock were numbered, placed him at the social-institutional epicenter of the Victorian cult of sincerity. Stephen was inaugurated as an undergraduate, and he remained loyal to the group throughout his life.²⁹² The society was a bedrock of the “academic liberal” movement of morally earnest and reform-minded young professionals and scholars which was to have a great influence on both university and national politics throughout the second half of the nineteenth century.²⁹³ Apostolic culture was founded on the ideal of friends pursuing the truth together in an un-hierarchical, questioning spirit; in their eyes, an absolute commitment to candor and truthfulness among one another was required for such Socratic pursuits to be fruitful.²⁹⁴ The “liberal man” extolled by the Apostles was not the adherent of a specific

²⁸⁸ Leslie Stephen, “Suppression of Poisonous Opinions,” 439.

²⁸⁹ *Ibid.*, 439.

²⁹⁰ Morley, *On Compromise*, 218. For Sidgwick, see e.g. “Clerical Veracity,” in *Practical Ethics* (London, 1898), 142-77; *The Ethics of Conformity and Subscription* (London, 1870).

²⁹¹ His contemporary renown hinged in part on his exemplification of these virtues; his entry in the tenth edition of the *Encyclopædia Britannica* included the following commendation: “Perhaps the most individual part of Stephen’s character was his absolute sincerity. He would not allow himself even innocent dissimulation”; *The New Volumes of the Encyclopædia Britannica*, (London, 1902), vol. 32, 885.

²⁹² Smith, *Stephen, Victorian Rationalist*, 5-6.

²⁹³ The best account of academic liberalism remains Christopher Harvie, *The Lights of Liberalism: The University Liberals and the Challenge of Democracy* (London, 1976).

²⁹⁴ See W.C. Lubenow, *The Cambridge Apostles, 1820-1914: Liberalism, Imagination, and Friendship in British Intellectual and*

doctrine but the man of earnestness and sincerity, and they self-consciously sought out an ideologically diverse membership in the belief that a group characterized by diverse opinions could coalesce around a common devotion to sincerity.²⁹⁵

Fittingly for an Apostle, Stephen's work evinces the tight connection between toleration at the policy level and truthfulness at the personal level.²⁹⁶ For instance, Stephen was troubled by the distressing tendency for policies of persecution or exclusion on grounds of opinion to afflict precisely those citizens who best embodied important moral qualities. If (as many Victorians believed, this being an age that feared the groupthink of the "tyranny of the majority") the average person tended to acquiesce and conform to the views dominant in his milieu,²⁹⁷ then it was likely that the vocal dissenter in religion or politics possessed a greater quotient of integrity and independence of mind than his more conformist contemporaries.²⁹⁸ Most people, Stephen lamented, did not bother to "clearly understand[]" or take "responsibility" for their "own opinions"; the "conscience" of the "great mass of men" amounted to no more than a "reflection of the current maxims and principles of the[ir] time and country."²⁹⁹ In light of these discouraging facts the criminalization of conscientious dissent looked especially harmful, for society could not afford to misuse what little candor and honesty it possessed.

Professional Life (Cambridge, 1998), esp. ch. 1.

²⁹⁵ See e.g. the quotes from Sidgwick in Richard Deacon, *The Cambridge Apostles* (London, 1985), 43-5 and Lubenow, *Cambridge Apostles*, 42-3, 202.

²⁹⁶ For the academic liberals as a whole, this connection between the legal-institutional and the personal levels was epitomized by their opposition to the universities' requirement to subscribe to the Thirty-Nine Articles, as well as to clerical control of the universities more broadly. For an overview of the literature on this subject, see W.C. Lubenow, "Review: University History and the History of Universities in the Nineteenth Century," *Journal of British Studies* vol. 39, no. 2 (2000): 247-62.

²⁹⁷ Morley characteristically bemoaned the dearth of citizens "courageous enough not to bow the knee to public opinion"; Morley, *Modern Characteristics* (London, 1865), 246.

²⁹⁸ Stephen would have known well from his brother's decision to make public his agnosticism at the cost of his position as a Cambridge don; see Noel Annan, *Leslie Stephen: The Godless Victorian* (Chicago, 1984), 42-7.

²⁹⁹ Stephen, "The Rights of Conscience," in *Horae Sabbaticae*, vol. 3, 338; "Pascal's Pensées," in *Essays by a Barrister*, 264.

Consequently, Stephen was eager to praise the “true courage” required to stand up for “the unpopular side” of a question.³⁰⁰ One of the most stirring moments of the *History of the Criminal Law* is his re-creation of the defense’s argument, in the 1792 trial of Thomas Paine for seditious libel, that restrictions on expression entailed the moral loss of turning the law against many citizens of upright intention and public spirit: “however erroneous his opinions may be,” Stephen concluded in the voice of the counsel for Paine, it was wrong to punish a “man who publishes what he really believes to be true from a desire to benefit mankind.”³⁰¹ Unsurprisingly, this idea of the virtue involved in maintaining a dissenting posture toward one’s society *even when the substance of the dissent was erroneous* was shared with Mill, who was always ready to praise those willing to make sacrifices for the sake of fidelity to “the true state of their mind.”³⁰²

Out of this diagnosis that structures of intolerance fell disproportionately on good rather than bad citizens Stephen built a potent rhetorical tactic. This was to concentrate on the identities of particular individuals who were both widely respected and whose conduct ran afoul of the laws which Stephen wanted repealed. In 1874, the year after Mill’s death, Stephen highlighted the tragic possibility that “Mr. Mill might have been prosecuted and excommunicated.”³⁰³ With this bit of counterfactual biography, he prompted his readers to contemplate the national loss that would have attended the imprisonment of Mill. A decade later he repeated the stratagem, this time using as his example the recently deceased economist-theologian-philosopher William Rathbone Greg, who will have a star turn as a commentator on representation issues in part two of the dissertation. Stephen

³⁰⁰ Stephen, *Criminal Law*, vol. 2, 363. See also his verdict that “intellectual cowardice” was widespread and courage with regard to the dissemination of ideas a rare virtue; Stephen, “Buckle’s *History of Civilization in England*,” vol. 107 (Apr. 1858): 465-512, 471.

³⁰¹ *Ibid.*, 364.

³⁰² Mill, Letter to Thomas Dyke Acland, 1 Dec. 1868, in *CW*, vol. 16, 1500. Mill traded powerfully on the positive valuation of the character of dissenters in an 1867 plea for leniency toward Irish rebels when he urged Parliament to bear in mind that, though “they very often do wrong things,” “political malcontents are very seldom bad men; they are generally better than the average”; Mill, Speech on the Reform of Parliament, 25 May 1867, in *CW*, vol. 28, 173.

³⁰³ Stephen, “Laws of England,” 460.

imagined how shameful it would have been if such a “distinguished author” and “eminent and useful member of the Civil Service” had “lost his income and his profession” and been thrown in jail.³⁰⁴ “The living authors who might be proceeded against in the same way,” Stephen continued, “are numerous and well-known, but it would be invidious to name them.”³⁰⁵ What it meant that laws inherited from times of persecution remained on the books was that candid souls were liable to be punished. It meant, moreover, that a great deal of the nation’s intellectual life lacked any legal standing: “a large part of the most serious and most important literature of our day is illegal....It may be said that so revolting a consequence cannot be true; but unfortunately this is not the case.”³⁰⁶ This was, in Stephen’s eyes, a grave state of affairs for the English heart and mind.

Indeed, Stephen took this line of thought a step further: not only did the failure to bring the law into conformity with the cultural consensus on toleration imperil good citizens; it also empowered bad citizens, or at least amplified the dangers stemming from our worst emotions. Not the least of the evils associated with the unmodified common law was that it “afford[ed] a channel for the gratification of private malice under the cloak of religion.”³⁰⁷ It followed from the archaic condition of the criminal law that holders of heterodox opinions remained under the arbitrary will of their orthodox compatriots. In periods of panic or national distress, the law might be made an instrument for scapegoating unbelievers: a persecutory law, however silent in quiet times, was “like a loaded fire-arm too old and rusty to be fired, but lying about in a lumber-room. It may do no harm for years, but any accident may cause it to go off, and if it does, it will in all probability hardly do

³⁰⁴ Stephen, “Blasphemy,” 315.

³⁰⁵ Stephen, “Laws of England,” 460.

³⁰⁶ Stephen, “Blasphemy,” 314. Recall Mill’s thoughts on the fragility of legal protection for speech in chapter one.

³⁰⁷ *Ibid.*, 318.

anything but mischief.”³⁰⁸ The persistence of persecution in English law was, according to Stephen, a standing invitation to our worst selves to harm our best selves.

We have now seen that Stephen expected toleration to secure moral benefits with regard to honesty in the expression of beliefs and the enhancement of the moral quality of public discourse. But he awaited other benefits from it as well. These extended, characteristically, to the level of the formation of beliefs; Stephen agreed with the liberal-minded literati of his day in being preoccupied with “the ethics of belief.”³⁰⁹ If toleration facilitated the fulfillment of the duty to *speak* truth, it also ensured that one could fulfill the duty to *seek* truth. While Stephen occasionally lambasted what he thought were naïve pleas for impartiality in public debate,³¹⁰ in company with other scientifically-oriented Victorians he preached the imperative of apportioning one’s beliefs to evidence. To espouse a “certitude of truth before you have had time to consider any facts which look in the opposite direction” was an act of intellectual wrongdoing.³¹¹ Not even in matters of faith was one allowed to extend the region of belief beyond the obtainable evidence; to Stephen it was indubitable that “the common rules of logic and evidence are the rules by which people ought to think on religion as well as on other subjects.”³¹² To put any data or arguments beyond the “pale of discussion” was to weaken the evidential character of belief-formation and to suggest that justified

³⁰⁸ Stephen, “Laws of England,” 468.

³⁰⁹ “The Ethics of Belief” was the title of a famous essay by the scientist-mathematician W.K. Clifford; see Clifford, “The Ethics of Belief,” in *The Ethics of Belief and Other Essays*, ed. Timothy Madigan (Amherst, NY, 1999), 70-96. Like Stephen, Clifford was a member of the “Metaphysical Society.” Clifford and Stephen were the most uncompromising advocates of empiricism against invocations of the “supernatural” in this famous Victorian intellectual institution; Brown, *Metaphysical Society*, 283. This analysis should correct the caricature of Stephen as a communitarian who denied that it was possible to make moral judgments about the way in which people arrived at their beliefs; see e.g. Vernon, “Liberals, Democrats,” 308.

³¹⁰ See e.g. “Gladstone and Lewis,” 284.

³¹¹ Stephen, “Certitude,” 37.

³¹² Stephen, “Newman and Liberalism,” 769. See also *Liberty*, 207, 227: “Turn and twist as you will, you can never really get out of the proposition that the Christian history is just as probable as the evidence makes it, and no more”; “the questions whether we ought to believe in God and in a future state are questions of fact and evidence.”

belief need not “be supported by good evidence.”³¹³ Compulsion of certain views under threat of pains and penalties, it goes almost without saying, violated this ethical outlook on the relationship of belief to evidence by introducing into the process of belief-formation considerations (such as the desire to avoid punishment) essentially unrelated to the assessment of the grounds for the belief. Since proper responsiveness to evidence was not only conducive to truth but also a central ethical requirement,³¹⁴ state intolerance crippled and distorted the moral lives of citizens.

Stephen, then, attributed to toleration and the liberties of expression several kinds of benefits, which I have broadly classified here under the headings of pacific, epistemic, and moral. These grounds were sufficient for Stephen to advocate unlimited religious discussion and very expansive if not officially unlimited political discussion for his own time and place. But it should be acknowledged that they did not extend to one area: that of “obscene” literature. Like his brother, he did not believe that lascivious publications deserved the protection of the law.³¹⁵ Stephen can occasionally read like the caricature of the prudish Victorian,³¹⁶ and perhaps it is because of his discomfort with the subject that he did not write much about it. Nevertheless, despite the paucity of material explicitly addressing the subject, it seems clear that in his mind neither the pacific nor the epistemic rationales translated into a defense of “obscene matter,” nor again did the concern about the moral formation of beliefs. The commitment to sincerity may have provided a more promising avenue, since an artistic project of sincerely expressing sexual desires or accurately representing sexual experience could have intelligibly fallen under this rubric. But it seems probable that his own conviction of the immorality of such expressions, in combination with the fact that the truthfulness

³¹³ Stephen, “Certitude,” 30.

³¹⁴ In the words of Clifford, “the existence of a belief not founded on fair inquiry unfits a man for the performance of his necessary duty”; *Ethics of Belief*, 73.

³¹⁵ Stephen *Liberty*, 82-4.

³¹⁶ See e.g. his disapproval of the “exceedingly dirty” moments in Voltaire; Stephen, “Voltaire as a Theologian,” 235.

with which he and his fellow liberals were concerned was above all truthfulness with regard to one's beliefs, kept him from expanding the parameters of press freedom to include obscenity.³¹⁷

d) Fairness and the Limitations of the Law

In addition to the three categories of advantages that we have surveyed, Stephen put forward a final reason for accepting the liberties of thought and discussion. This was that the traditional conceptual apparatus used to hem in the press was unsound. This apparatus hinged on the distinction between the “true” or “fair” *liberty* of the press and its *licentiousness*, the latter consisting of the publication of harmful falsities or subversive ideas.³¹⁸ This distinction suffered from two failings: first, that in condemning the expression of immoral or dangerous views it begged the question of which views were moral and beneficial; second, that in permitting the penalization of “licentious” expressions it invested officials with the power to suppress dissent by classifying it as “license.” Fortunately, Stephen believed, the British public had wised up to the inconsistency between, on the one hand, the right of “unrestricted discussion of public affairs, carrying with it the right of finding

³¹⁷ Even on this front, however, we should not be misled by the conventional picture of an authoritarian Stephen. The mid- and late-Victorian era witnessed a panic about lewd and pornographic literature. (Donald Thomas, *A Long Time Burning*, ch. 11. Thomas makes the interesting observation that Mill was not in the least concerned to fight this rising tide against obscenity; *ibid.*, 215). Relative to this temper of the times Stephen was latitudinarian about sexually immoral expression. He proposed a liberalization of the current law on obscene publications which would protect the “exhibiting [of] disgusting objects, or [the] publishing [of] obscene books, papers, writings, prints, pictures, drawings, or other representations, if their exhibition is for the public good,” and he warned juries not to use the power of passing judgment against “publications on the relation of the sexes” which contained “*bonâ fide* expression of opinions commonly regarded as immoral” (Stephen, *A Digest of the Criminal Law*, third edition [London, 1883], 116-7. J.E. Hall Williams believes that Stephen was the first to formulate this “public good” defense for the publication of obscenity; Williams, “Obscenity in Modern English Law,” *Law and Contemporary Problems*, vol. 20, no. 4 [1955], 637). Moreover, he was careful to distinguish obscenity in the narrow and legally punishable sense from “immorality in the wider sense,” and he made this distinction in order to ensure that works belonging to the latter category were not wrongly punished. (“A man might with perfect decency of expression, and in complete good faith, maintain doctrines as to marriage, the relation of the sexes, the obligation of truthfulness, the nature and limits of the rights of property, &c, which would be regarded as highly immoral by most people, and yet (I think) commit no crime.... I think that juries ought to exercise such a power with the greatest caution, when a man writes in good faith on a subject of great interest and open to much difference of opinion, and when no indecency of language is used, except such as is necessary to make the matter treated of intelligible”; *ibid.*, 117.) In short, although a great deal of the depiction of sex to which we are accustomed in the media today would not have been permitted by Stephen, it would be wrong to believe that he did not attempt to square his objections to obscenity with his more general liberalism about the press.

³¹⁸ See e.g. Wickwar *Struggle for the Freedom of the Press*, *passim*; Aspinall *Politics and the Press*, ch. 2.

fault with public personages of whose conduct the writer might disapprove” and, on the other, the government’s invocation of “Pandora’s box” that was “the license of the press.”³¹⁹ In modern England this distinction had been exposed as sophistry.³²⁰

The prominence of the jurisprudential distinction between liberty and license had waned over the course of the nineteenth century. Yet Stephen lamented that the moribund liberty-license dichotomy had been superseded by another distinction that purported to respect all “fair discussion” but which in actuality did nothing but hamper the free exchange of views.³²¹ This was the separation of style and substance, of “the manner” and “the matter.”³²² According to promulgators of this distinction, often invoked as an interpretation of the law of blasphemy, “decent and serious attacks on Christianity are permissible, but...the ‘decencies of controversy’ must be observed.”³²³ Stephen was contemptuous of this reasoning, both on the grounds discussed above,³²⁴ and on the further philosophical ground of the indivisibility of form and content.³²⁵ Greater than even these objections, though, was his estimate of the differential class-based impact of such laws:

If you allow coarse and vulgar people to discuss these subjects freely, they must and will discuss them coarsely....You cannot in practice send a man to gaol for not writing like a scholar and a gentleman when he is neither one nor the other... Practically the result would

³¹⁹ Stephen, *Criminal Law*, 349.

³²⁰ Ibid., e.g. 367. Frederick Schauer thus moves too quickly in assuming that Stephen’s belief in a “strong central authority” carried with it any disapprobation for or desire to limit “freedom of speech”; *Free Speech: A Philosophical Enquiry* (Cambridge, 1982), 157.

³²¹ Stephen, *Criminal Law*, vol. 2, 367.

³²² Ibid., 475.

³²³ Stephen, “Blasphemy,” 315. The common law offense of blasphemy, of whose “utter unfitness for these times” Stephen was “firmly convinced,” was not abolished in England until 2008; see Russell Sandberg and Norman Doe, “The Strange Death of Blasphemy,” *Modern Law Review*, vol. 71 (2008): 971-86.

³²⁴ He complained that on such a legal scheme the authorities would be empowered to punish “any energetic, vigorous denunciation of the weak side of any religious system”; Stephen, “Blasphemy,” 316.

³²⁵ “You cannot really distinguish between substance and style”; *ibid.*, 315. It is worth highlighting that his rejection of the desire to penalize “heat, exaggeration, and fierce invective” is close in both style and substance to Mill’s attack on the suggestion that “temperate” and “fair discussion” of “all opinions should be permitted” while “invective, sarcasm, personality, and the like” were to be prohibited; Mill, *On Liberty*, 258.

be what it always has been. No such cases [against educated and affluent heretics] would ever be tried; and the result is that so long as the law is what it is, it will always afford an example of that unequal justice which is much the same as injustice. It will be a law which may now and then hit the weak, but which the strong will always evade.³²⁶

The complaints that religious-political heterodoxy was a privilege that the upper classes reserved for themselves and that restrictions on the press were designed with the purpose of keeping the masses outside the discussion of these “dangerous” ideological currents were familiar ones in the nineteenth century, especially on the radical left.³²⁷ Stephen’s alignment with chartists and socialists on this grievance goes, to say the least, unaddressed in standard portrayals of him as simply Mill’s opposite number. That Stephen had such unexpected bedfellows on this point should be recalled when the more elitist dimensions of his thought are treated in section 2(b).

Stephen’s antipathy toward the conservative credo that the state protected the just liberty of the press by restraining licentiousness extended to what he took to be the non-legal correlate of this position in the realm of public opinion. This was the notion that, however much latitude the law granted the press, it was inappropriate to pursue certain avenues of inquiry lest they lead to dangerous consequences. Mill was famously hostile to warnings that some ideas should not be discussed due to their potential for “subverting the foundations of society,” calling these

³²⁶ Stephen, “Blasphemy,” 315-6. Leslie Stephen may have had such passages in mind when he wrote of his brother: “I believe that there was no man living who had a more intense aversion than Fitzjames to all oppression of the weak, and, above all, to religious oppression”; Leslie Stephen, *Life of Fitzjames Stephen*, 326.

In his acceptance of the law of obscene libel Fitzjames likely did not live up to these instincts about equality before the law, for that law’s implementation was widely known to have an inegalitarian rationale; “lascivious” material which was acceptable in an aristocrat’s private collection was not fit for distribution to the lower orders of society. (See e.g. Christopher Hilliard’s discussion of the principle of “variable obscenity” – by which the same book warranted prosecution if it were likely to reach a mass audience but did not need to be prohibited if it could be expected to be consumed only by a select upper-class readership – which governed the regulation of obscene libel in England from the mid-Victorian period to the mid-twentieth-century; Hilliard, “‘Is It a Book That You Would Even Wish Your Wife or Your Servants to Read?’ Obscenity Law and the Politics of Reading in Modern England,” *The American Historical Review*, vol. 118, no. 3 [2013]: 653-678.) That said, I have not found a passage in which Stephen explicitly employs this paternalist-inegalitarian rationale for the law of obscene libel, and his own example in *Liberty, Equality, Fraternity* of a justifiable prosecution for obscenity is taken from an aristocratic milieu; *Liberty*, 84.

³²⁷ See e.g. the writings of the socialist-atheists G.J. Holyoake and W.J. Linton; Holyoake, *A Short and Easy Method with the Saints* (London, 1843), 18; Linton, *James Watson: A Memoir*, 3, 9.

admonitions “mere bugbear[s] to frighten imbeciles with,”³²⁸ and Stephen was hardly more amenable to the employment of such predictions as a means of keeping specific subjects out of the public debate. Though, unlike Mill or his brother, Fitzjames harbored serious doubts about the impact of a decline of religion on the moral condition of England, he did not consider these doubts a reason to deter either others or oneself from investigating such sensitive subjects as the truth of Christianity. Rather it was an ethical and intellectual failure “to say that the truth of a theological doctrine must not be questioned, lest the discovery of its falsehood should produce a bad moral effect”; in contrast, “the question of truth must precede the question of goodness.”³²⁹ Stephen lamented that “the number of people who are sincerely and earnestly desirous of arriving at truth, especially at theological truth, at any expense of suffering and labour, is small indeed,” and alarm at the consequences that would attend this arrival was a major contributor to the prevailing unconcern for truth.³³⁰ In short, he bristled at public opinion’s power to keep unpopular and unsettling views in the dark; this protectiveness toward vulnerable dissent should be borne in mind when we come to assess Stephen’s well-known defense of “social intolerance” in the next section.

Contrary to his reputation today, then, Stephen was not a reactionary or authoritarian on the subject of intellectual-expressive liberty. Instead, he articulated a nuanced and multi-faceted position on the grounds and nature of toleration. Insofar as his clash with Mill concerned the freedom of thought and discussion, it was not, as it has often been imagined to be, a clash between secular and religious visions of politics, or between liberal and illiberal policies on the press.³³¹ The Mill-Stephen

³²⁸ Mill, “Stability of Society,” in *CW*, vol. 25, 1181.

³²⁹ Stephen, Untitled contributions in *A Modern Symposium, Subjects: The Soul and Future Life and The Influence upon Morality of a Decline in Religious Belief* (Detroit, 1878), 189, 265.

³³⁰ Stephen, “Pascal’s Pensées,” 264-5.

³³¹ *Pace* e.g. Richard Vernon, who sees the Mill-Stephen quarrel as “a contest between religious and secular conceptions of moral and political life”; Vernon, *Career of Toleration*, 89. It must be remembered that Stephen was, even in the most orthodox periods of his life, an anguished believer who would never go beyond declaring the truths of Christianity

controversy must, rather, be understood as a contest between two visions of the value of toleration and of the implications of endorsing toleration for politics more generally. The causes of Stephen's dissatisfaction with the rival Millian vision are the subject of the next section.

2) The Critical Side of Stephen's Thought on Toleration

a) The Critique of Locke: Disagreement over First Principles

Although it has gone unrecognized by scholars, the target of the negative side of Stephen's writing on toleration was broader than Mill, and his elaboration of a critical account of contending theories did not begin with his attack on *On Liberty*. Six years before the publication of *Liberty, Equality, Fraternity* Stephen wrote an analysis of Locke's *Letters on Toleration*. Because he saw continuity between Lockean ideas and "the popular views," "the orthodox faith on the subject" in "the present day" which had received their most systematic elucidation in *On Liberty*,³³² the earlier essay can be seen as a test-run for some of the argument of *Liberty, Equality, Fraternity*.

We saw earlier that Stephen was hostile to a priori, "intuitionist" claims in epistemology or moral philosophy, and this hostility extended to their appearance in political and social theory. As Peter Nicholson has observed, Stephen was a true *inductivist*, committed to the exclusion from philosophical discourse of all non-empirical normative principles.³³³ He agreed with Bentham's assessment of the latter as arbitrary "contrivances" by which authors "avoid[ed] the obligation to appeal to any external standard, and...prevail[ed] upon the reader to accept of the author's sentiment as a reason for itself."³³⁴ Again following Bentham, for Stephen the only alternative to the

"probable." By the time he wrote *Liberty, Equality, Fraternity* and most of the essays considered here he was already well on his way to losing his faith in anything resembling orthodox Christianity.

³³² Stephen, "Locke on Toleration," 157.

³³³ Peter Nicholson, *The Political Philosophy of the British Idealists* (Cambridge, 1990), 153.

³³⁴ Bentham, *An Introduction to the Principles of Morals and Legislation* (Oxford, 1907), 17. Stephen followed Bentham's

arbitrary impositions of these intuitionist forms of morality was utilitarianism, which grounded its moral claims in *facts* about the world rather than in the *wishes* of philosophers or theologians, and which therefore supplied an independent standard for moral judgments.³³⁵ To be sure, Stephen's utilitarianism was not identical to Bentham's.³³⁶ But the important point here was that, for Stephen as much as for Bentham, practical reasoning which was not grounded in empirical observation and inductive method was specious. The *principles* which *a priori* moral philosophy claimed to deliver were truly no more than mere *preferences* which authors foisted on the public through the assumption of the mantle of moral authority. Moreover, since they lacked any reality beyond the wishes of their progenitors, they provoked "endless disputes" when they were invoked to resolve public questions.³³⁷

The equation of appeals to natural rights or the moral sense with a desire to disguise personal sentiments as philosophical principles animated not only Stephen, but Victorian intellectuals of many stripes. Naturally there were exceptions. Yet British thought in the second half of the nineteenth century resounded not only with denunciations of natural rights, but also with (even more telling) matter-of-fact comment on the marginalization of such theories among the more

terminology in calling these non-utilitarian concepts "principles of sympathy and antipathy." It should be recalled that Stephen was far from alone in finding these passages of Bentham particularly impactful: they were precisely the ones which had the greatest effect on the adolescent Mill; see Mill, *Autobiography*, 67-9.

³³⁵ Stephen held that the most important "sense" in which he was "[him]self a utilitarian" was his belief that "from the nature of the case some external standard must always be supplied by which moral rules may be tested; and happiness is the most significant and least misleading word that can be employed for that purpose"; *Liberty*, 170. For an analysis of the relation of facts and values in Bentham of which, I think, much applies to Stephen, see Philip Schofield, "Jeremy Bentham, the Principle of Utility, and Legal Positivism," in Bentham, *Selected Writings*, ed. Stephen Engelmann (New Haven, 2011), 425-59.

³³⁶ See e.g. Stephen, *Liberty*, 215-27.

³³⁷ Stephen, "Paley's Moral Philosophy," in *Essays by a Barrister*, 300.

Interestingly, the accusation that philosophers of abstract right were guilty of using grand ideas to cloak the imposition of their will was redeployed by Stephen against the vigorous activity of Victorian philanthropists: "Humanity is only I writ large, and love for Humanity generally means zeal for my notions as to what men should be and how they should live"; a philanthropist is an "unaccountable person with whom it is difficult to deal upon any well-known and recognized principles, and who is capable of making his love for men in general the ground of all sorts of violence against men in particular" (*Liberty*, 180, 182). The essays "Philanthropy," "Doing Good," "Morality and Sensibility," and "Gamaliels" (all in *Essays by a Barrister*) are replete with similar sentiments.

educated strata of their society.³³⁸ Stephen was wholly in keeping with the “enlightened” liberalism of his time when he announced that such non-empirical *a priori* schools of thought were at present held only by “uneducated sophists” and that they had been “repudiated by the most influential school of liberals.”³³⁹ The problem, however, was that uneducated sophists were a powerful segment of society. Stephen would have agreed with the verdict rendered by his admirer, the Idealist D.G. Ritchie, in the year after his death: “Though disclaimed by almost all our more careful writers on politics and ethics, [the theory of natural rights] yet remains a commonplace of the newspaper and the platform” and thus was “capable of mischief.”³⁴⁰ Despite the disapproval of the best minds, ideas of natural rights and other *a priorisms* still polluted English political culture.

Analyzing Locke for the *Saturday Review* was a chance for Stephen to investigate these damaging “commonplaces” at their source.³⁴¹ Simply put, Locke was neither a utilitarian nor an historian, and he accordingly neglected the two tasks required of any advocate of a policy. These were to show: first, that following the recommended course was productive of some benefit; and second, that, in the conditions in which it would be implemented, the benefit could be expected to be produced without “too great an expense.”³⁴² On Stephen’s reading, Locke had failed on both counts; he really had done no more than find creative ways of saying that *he wanted* toleration.

³³⁸ To give just a few examples from across the ideological spectrum: The liberal George C. Brodrick chided his political opponents in the debate over the Second Reform Act for rhetorically playing upon the well-known “English dread of *a priori* rights”; John Henry Newman noted that the “deep thinkers of the day” had rejected the thought that there were “certain Rights of man”; and Lord Robert Cecil, the future Tory Prime Minister (as the 3rd Marquess of Salisbury), observed that it was no longer permissible in political debate to offer other grounds for one’s views than “expediency,” the “ingenious network of political first principles which the industry of three centuries had woven” having been “laid aside.” See Brodrick, “The Utilitarian Argument Against Reform, as Stated by Mr. Lowe,” in *Essays on Reform* (London, 1867), 14; Newman, *A Letter Addressed to His Grace the Duke of Norfolk, on Occasion of Mr. Gladstone’s Recent Expostulation* (London, 1875), 75-6; Robert Gascoyne-Cecil, “The Theories of Parliamentary Reform,” in *Oxford Essays, Contributed by Members of the University, 1858* (London, 1858), 52.

³³⁹ Stephen, “Mr. Hallam,” in *Essays by a Barrister*, 25; “Dr. Newman and Liberalism,” 770.

³⁴⁰ Ritchie, *Natural Rights*, ix.

³⁴¹ Stephen, “Locke on Toleration,” 158.

³⁴² Stephen, *Liberty*, 35. See also “Locke on Toleration,” 169; “Laws of England,” 447.

“[Locke’s] whole theory” was “little more than a continued repetition of one thought in a variety of different forms of words,” to wit, that he had hypostasized his own preferences into moral entities which, he then asserted, had to govern the structure of states.³⁴³ Stephen objected to

the method on which [the *Letter Concerning Toleration*] proceeds, which is to form a notion as to what a State ought to be, and then to make that notion the criterion by which you are to judge of the duties and functions of existing States. Locke’s plan, in fact, would appear to have been, to form in his own mind a scheme which appeared to him to be advantageous for the States with which he was acquainted, to take that as the model of a State, and then to condemn everything which diverged from it, on the ground that it was not agreeable to the law of nature.³⁴⁴

Instead of forming an “abstract idea of a State,” which was nothing but “lost labour,” Locke ought to have posed to himself the “soluble problem...What, as a fact, are, and have been, the effects of such and such institutions, and are those effects good or bad?”³⁴⁵ Since he had not envisioned his task in this manner, the *Letter* was doomed to inadequacy. Stephen’s final assessment of the Lockean approach was unsparing: “it is not enough to measure every institution by your own standard of what is useful or desirable.”³⁴⁶ In Bentham’s parlance, Locke had asked us to accept his sentiment as a reason in itself.

As Stephen saw it, this problem of imposing preferences under the guise of abstract ideas was accompanied by another, equally serious one: as normally occurred when “broad *a priori* principles” replaced genuinely reason-giving argument, Locke proclaimed the “separation between the temporal and spiritual powers” to be universally applicable, with no attention paid to context and history.³⁴⁷ In keeping with the historicist, developmental outlook of Victorian social thought, the

³⁴³ Stephen, “Locke on Toleration,” 163.

³⁴⁴ Ibid., 163.

³⁴⁵ Ibid., 163-4.

³⁴⁶ Ibid., 164.

³⁴⁷ Stephen, “Locke on Toleration,” 162, 173.

universality of Lockean toleration struck Stephen as patently absurd.³⁴⁸ In “bas[ing] the duty of toleration upon...universal principles,” Locke undermined the credibility of his cause through theoretical overreach.³⁴⁹ In lieu of such false universality he ought to have elaborated “particular propositions” which contextually and consequentialistically supported toleration.³⁵⁰ As Stephen saw it, Locke’s error – the inflation of sensible but limited prescriptions into immutable verities – was typical of the methods of reasoning that had prevailed prior to the “essentially historical” social science of the nineteenth century.³⁵¹ In a re-run of the arguments in section one about the “modern” character of toleration, Stephen called it a great “fault” of the *Letters* “that they apply to all ages what is true only of an age of high cultivation”; Locke had suppressed a crucial premise of the argument for toleration, which was that “human society has reached its present condition.”³⁵² The substitution of preferences and abstractions for benefits and reasons, the inattention to the situational and historical, rendered the *Letter* an unconvincing document.

Stephen took the occasion of the commentary on Lockean toleration, then, to express his dissent from the *a priorist* and ahistorical character of the first principles that still constituted the “most widely popular [views] upon the subject.”³⁵³ The same objection, we will now see, was at the center of his reply to Mill, with the addition, in the latter case, of another layer of critique targeted at

³⁴⁸ “It is impossible to say that, under no circumstances, at no time, and at no place, can it be justifiable to persecute”; “there are states of society in which opinion, sentiment, and practice, are so closely and inseparably united, that neutrality and toleration are scarcely possible, and in such cases persecution can hardly be blamed”; *ibid.*, 170.

³⁴⁹ *Ibid.*, 170.

³⁵⁰ *Ibid.*, 173. Such contextually-sensitive propositions, he continued, “in reality have a firm foundation of their own to rest upon.”

³⁵¹ Stephen, “Hobbes on Government,” in *Horae Sabbaticae*, vol. 2, 4. Stephen was comparatively mild in his censures of Locke, probably because he judged this rush to declare the eternal truth of everything which struck him as right for the England of his time more excusable in Locke than in his own contemporaries who ought to have understood social principles could only be declared valid with reference to a specified “period in human affairs.” *Criminal Law*, vol. 2, 376. The seventeenth century was a time when “the necessary materials for the historical mode of treatment did not exist”; “Hobbes on Government,” 5.

³⁵² Stephen, “Locke on Toleration,” 173.

³⁵³ *Ibid.*, 162.

the wider nest of beliefs in which religious and expressive liberty had been embedded.

b) The Critique of Mill: Detaching Toleration from the “Religious Dogma of Liberty”

Two disclaimers are due at the outset of this subsection. First, I should remind the reader that we are not covering the whole of Stephen’s dissent from Mill, but only that part which bears on the issue of toleration and liberty of discussion. *Liberty, Equality, Fraternity* covered wider terrain than this, but those other themes are addressed here only when they come to bear on our main themes. Second, in reconstructing Stephen’s reading of Mill, I do not mean to endorse it. The accuracy of Stephen’s interpretation of Mill is debatable on many points. At various moments I will note what I consider to be errors of interpretation on Stephen’s part, but it is beyond the scope of this chapter to enter into the intricacies of Mill exegesis that exist on nearly all of these issues.

Stephen’s rebuttal of Mill combined the core of his critique of Locke with a rejection of the cluster of (in his eyes) false beliefs that had grown up around the just policies of toleration and intellectual freedom. This section will take each of these aspects in turn.

In light of the consequentialist Victorian philosophical milieu sketched in the preceding subsection, it should be clear that when Mill announced in *On Liberty* that he was prepared to “forego any advantage” derivable from an appeal to the “idea of abstract right,” he was promising one of the least costly sacrifices in the history of philosophy.³⁵⁴ The problem, though, was that many of his contemporaries did not believe that he had actually carried out the promised sacrifice. Suspicions that Mill had abandoned utilitarianism, even in the relatively inclusive and undogmatic sense by which Stephen and his fellows had come to hold it,³⁵⁵ were rife in the years during and after

³⁵⁴ Mill, *On Liberty*, 224.

³⁵⁵ Stuart Warner puts the point well and in a way that applies beyond Stephen to a large crop of the intellectuals of his time: “Stephen’s utilitarianism was not the technical, philosophical doctrine that one finds represented in Bentham or presented in Henry Sidgwick’s *The Methods of Ethics*. Rather, it was a certain disposition of mind that expressed itself by privileging observation and facts over abstract reason”; Warner, “Foreword,” to Stephen, *Liberty, Equality, Fraternity*, x. It

the publication of *On Liberty*, *Considerations on Representative Government*, and *The Subjection of Women*.³⁵⁶

It is true that debates about whether Mill ought to be regarded as a utilitarian have persisted into the present day³⁵⁷; but to some extent the persistence of this question has served more to obscure than to illuminate. Whereas today these are rather sterile academic disputes, in the Victorian era the accusation of deserting a consequentialist framework was a serious one. And this is precisely the accusation which Stephen levelled: explaining his motivation for *Liberty, Equality, Fraternity*, Stephen wrote that Mill was a “deserter from the proper principles.”³⁵⁸ It was basically widely assumed that, if one could show Mill to have operated on notions of abstract right, this would be sufficient to discredit *On Liberty tout court*; to call Mill an “abstract right” theorist was perhaps the harshest epithet that could be given him.³⁵⁹

On the foundational philosophical plane, then, the assault on Mill reproduced the themes of the Locke essay – although the tone was less measured, for there was a personal sting in seeing the man who had exerted such influence on him betray the true principles. Mill had abandoned

is an overstatement, however, to deny that Stephen ascribed a philosophical substance and technique to utilitarianism; it would have been more accurate to say that utilitarianism was *as much* a disposition as a doctrine to him.

³⁵⁶ Examples of the characterization of Mill as a theorist of some form of “abstract right” include: Robert Lowe, *Speeches and Letters on Reform*, (London, 1867), 35; ; F.C. Montague, *The Limits of Individual Liberty* (London, 1885), 183, 187; Sigwick, “Review of *Liberty, Equality, Fraternity*,” 293; D.G. Ritchie, *The Principles of State Interference* (London, 1891), ch. 3; Harrison, *Tennyson, Ruskin, Mill*, 296, 301; Grote, *An Examination of the Utilitarian Philosophy*, ch. 1; G.J. Holyoake, *John Stuart Mill, as Some of the Working Classes Knew Him* (London, 1873), 9. See also Harvie, *Lights of Liberalism*, 40-1; John Rees, *John Stuart Mill's On Liberty* (Oxford, 1985), ch. 1.

This perception was also common across the Channel. See e.g. Charles Dupont-White, “Introduction,” to JS Mill, *Le Gouvernement représentatif*, trans. Dupont-White, third edition (Paris, 1877), xli; Édouard Laboulaye, *L'État et ses limites*, fifth edition (Paris, 1871), 55-7.

³⁵⁷ See e.g., Alan Ryan, “Introduction” to Mill, *CW*, vol. 9, lxvii; D.A. Lloyd Thomas, “Liberalism and Utilitarianism,” in *Mill's Social and Political Thought, Critical Assessments*, vol. 1, 307-22; Richard Wollheim, “John Stuart Mill and the Limits of State Action,” in *Mill's Social and Political Thought*, vol. 2, 75-95.

³⁵⁸ Quoted in Leslie Stephen, *Life of Fitzjames Stephen*, 308.

³⁵⁹ The impact of the charge is remindful, though of course it is a much less extreme version, of the power that revealing an author to be an “atheist” had in the times of Bentham and Mill's father.

The anxiousness to reveal Mill as a crypto-believer in the Rights of Man was tied to the sense that Mill was fond of France to an unpatriotic degree; it was not by accident that Stephen took the slogan of the French Revolution as the title for his book. See e.g. Joseph Hamburger, “Individuality and Moral Reform: The Rhetoric of Liberty and the Reality of Restraint in Mill's *On Liberty*,” in *Mill's Social and Political Thought*, vol. 2, 422.

historicist consequentialism for “abstract principles about freedom.”³⁶⁰ Although he said that he “is no believer in abstract rights, the law of nature, the inherent equality of all men” but professes to be a “Benthamite,” sadly “he does not write like one.”³⁶¹ Instead, in a way unbefitting his towering mind and more “like smaller men,” his views sprang from “his sympathies and antipathies.”³⁶² Into his thought Mill had smuggled “notion[s] about natural rights which cannot be resolved into general expediency.”³⁶³ Far from attending to the lessons of “experience alone,” he had instead become infatuated with enunciating “very simple principle[s],” mere “theoretical” rules, which would apply “absolutely.”³⁶⁴ In short, Mill had fallen out of step with the best thinking of his time.

In chasing these abstract, absolute chimeras Mill had stumbled into the same vices as Locke. First, he had grown numb to the proper weighing of costs and benefits in context and had indulged in distortive theoretical overreach:

If Mr. Mill had limited himself to the proposition that in our own time and country it is highly important that the great questions of morals and theology should be discussed openly and with complete freedom from all legal restraints, I should agree with him. But the impression which the whole chapter leaves upon me is that for the sake of establishing this limited practical consequence, Mr. Mill has stated a theory which is very far indeed from the truth...³⁶⁵

Unlike Locke, Mill had laid claim to the historical method as he had to the utilitarian perspective.³⁶⁶ But to Stephen, this former claim was, like the latter, no more than lip service, intended to paper over the elevation of liberty into an absolute good for which there could be no qualification. In seeking for grand principles Mill had forgotten that, judged from the God’s eye point-of-view, all

³⁶⁰ Stephen, *Liberty*, 55.

³⁶¹ Stephen, “Mr. Mill’s Essays [2],” vol. 8 (16 July 1859): 76-8, 77.

³⁶² *Ibid.*, 77. And see note 122 above.

³⁶³ *Ibid.*, 129.

³⁶⁴ *Ibid.*, 131, 35, 82, 245; Mill, *On Liberty*, 223.

³⁶⁵ Stephen, *Liberty*, 25.

³⁶⁶ *Ibid.*, 17-9; Mill, *On Liberty*, 224.

recommendations in the domain of human affairs must repose on “narrow and special grounds.”³⁶⁷

In the words of Sidgwick, it was “pure Benthamism” on Stephen’s part to reject Mill’s “fictitious air of demonstrative cogency” and to relocate the question on the ground of “probable reasoning.”³⁶⁸

As with Locke, the defect of ungrounded universalism shaded into a second fault, which was that the author’s preferences replaced his reasons. This was inevitable, because all true reasons arose from experience and experience of universals was impossible. Accordingly the universalizer and absolutist was bound to substitute his desires for genuine data and argument. Much of *Liberty, Equality, Fraternity* consists of Stephen accusing Mill of offering mere “assertion” instead of “proof.”³⁶⁹ In sum, Mill had discarded the ideologically modest, empirically-bound methods which he officially endorsed for the unconstrained statement of his own preferences as operationalized in “some such theory as is involved in the expression ‘rights of man.’”³⁷⁰

That the question of Mill’s departure from consequentialist-experiential modes of political reasoning was understood to be the fulcrum on which the discomfort of Stephen and others turned is well illustrated by the pains which the self-appointed leader of the Millians, John Morley, took to prove that *On Liberty* “reposes on no principles of abstract right, but like all the rest of its author’s opinions, on principles of utility and experience.”³⁷¹ We might ask, though, why this issue of Mill’s apostasy exercised Stephen so much. As his brother put it: “practically...the difference comes to

³⁶⁷ Stephen, *Liberty*, 24.

³⁶⁸ Sidgwick, “Review of *Liberty, Equality, Fraternity*,” 293.

³⁶⁹ Ibid., 18. See e.g. p. 8: “there is hardly anything in the whole essay which can properly be called proof as distinguished from enunciation or assertion.”

³⁷⁰ Ibid., 128.

³⁷¹ Morley, “Mr. Mill’s Doctrine of Liberty,” in Morley, *Nineteenth Century Essays*, ed. Peter Stansky (Chicago, 1970), 117. This essay was intended as a reply to *Liberty, Equality, Fraternity*. He continued: “Mr. Stephen failed...to see that the very aim and object of Mr. Mill’s Essay is to show on utilitarian principles that compulsion...is always bad” (123).

little” between Mill and “Mill’s opponents,” since the latter were “as tolerant as himself.”³⁷² While Mill spoke of a “universal rule,” this was hardly discrepant in its policy repercussions from his opponents who made toleration a matter of “expediency” but affirmed that “in almost every conceivable case, toleration is clearly expedient.”³⁷³ If there was little policy fallout on the toleration question corresponding to this philosophical disagreement, did that mean that there were no practical stakes to the dispute about whether Mill was a covert *a priorist*?

The answer, for Stephen at least, was resoundingly no. As noted in the introduction, there were political disagreements of great real-world import (most notably on women’s equality) between Stephen and Mill.³⁷⁴ But there were other, less immediate negative consequences arising from the philosophical failures which Mill had come to typify.

Unlike his brother, for whom social forces were the movers of history, Fitzjames accepted Mill’s judgment that ideas were the most important factors in “determin[ing] the moral and political state of the community.”³⁷⁵ It followed from this that poor philosophy eventually resulted in deleterious real-world outcomes. In the end “incorrect” theory turned “practically mischievous” and became a “serious embarrassment to rational legislation.”³⁷⁶ As Mill himself had taught, the non-consequentialist modes of thought which Stephen deplored were the “*fons errorum*” from which the

³⁷² Leslie Stephen, “Suppression of Poisonous Opinions,” 410.

³⁷³ Ibid., 410. Officially Leslie agreed with Fitzjames in declining subscription to a universal rule: “we must sometimes be content with an imperfect application [of the principle of toleration], and permit it to be overridden by other principles which spring from the same root of social utility” (437). On the other hand, temperamentally Leslie craved a nearer approximation to an absolute prohibition of intolerance than the “more cautious,” calculative, and contextual phrasing preferred by Fitzjames (*Liberty*, 35).

³⁷⁴ For Stephen, Mill’s *a priorism* was as apparent in his writings on women’s rights and the equality of the sexes as those on liberty of discussion; *Liberty*, ch. 5.

³⁷⁵ Mill, *Logic*, 926; Smith, *Stephen, Victorian Rationalist*, 45. For Leslie Stephen’s more materialist view, see the “Introductory” to *History of English Thought in the Eighteenth Century*, 2 vols. (London, 1876), vol. 1.

³⁷⁶ Stephen, *Liberty*, 24-5. See also 36: “Few persons would be found, I suppose, in these days to deny the paramount expediency, the utility in the highest sense, of having true opinions....To believe true statements, to disbelieve false statements, to give to probable or improbable statements a degree of credit proportioned to their apparent probability or improbability, would be the greatest of intellectual blessings.”

least enlightened institutions and ideas in England derived.³⁷⁷ Hence in interrogating Mill's political theory at its bedrock level, Stephen was turning the (true) Mill of the *Logic* against the (false) Mill of the famous later political writings.

It is particularly noteworthy how Stephen characterized the “popular” “school” of which the Mill of the 1850s-60s was the type.³⁷⁸ His name for “the theory about liberty advanced by Mr. Mill” was “the religious dogma of liberty”; its adherents were “worshippers.”³⁷⁹ Whatever one's preconceptions about Stephen, it should be clear by now that these appellations were pejorative. His point was that the “enthusiastic” (using the word in the original sense of overzealous Protestantism) devotees of this “creed of a religion” were guilty of a contempt for evidence and rational scrutiny, of letting “popular sentiment” overtake reason.³⁸⁰

This religious vocabulary signaled a personal moral failing, namely, an insufficient concern for truth. In addition, it connoted a one-sidedness of outlook that was detrimental to the solution of political problems. Though we tend to associate the appreciation of many-sidedness and “partial truths” with Mill, Stephen saw the dictum that “truth, in the great practical concerns of life, is...a question of the reconciling and combining of opposites” as empty words in Mill's mouth.³⁸¹ Stephen preached back at Mill the homily which Mill surely thought he had been delivering:

It appears to me that the *erreur mère*, so to speak, of most modern speculations on political subjects lies in the fact that nearly every writer is an advocate of one out of many forces, which, as they act in different directions, must and do come into collision and produce a

³⁷⁷ Mill, “Diary of 1854,” in *CW*, vol. 27, 649; and see above, note 265. For a related treatment of the inadequacy of *a priori* theories which has been neglected because it occurs in one of Mill's lesser-known works, see “Thornton on Labour and Its Claims,” in *CW*, vol. 5, 631-68, 650-6.

³⁷⁸ Stephen, *Liberty*, 128.

³⁷⁹ *Ibid.*, 112, 5.

³⁸⁰ *Ibid.*, 112, 3, 165. His characterization of “liberty” as “Mr. Mill's Brahminic bull” is further evidence of how a negative perception of the religious spirit of Mill's view influenced his rejection of it; *ibid.*, 89.

³⁸¹ Mill, *On Liberty*, 254.

resultant according to the direction of which life is prosperous or otherwise.³⁸²

Because there were “a number of objects the attainment of which is desirable for men,” public affairs had essentially to be the province of weighing and balancing; they were a probabilistic domain, and it was a dangerous “pretention” to strive “to attain to something more than probability.”³⁸³ In their usual forms, religious modes of thought were deleterious to practical reasoning; devotion to a “creed” was “ill-adapted” to the carefulness which the variety of political goods and harms demanded.³⁸⁴ A genuine *political* outlook – that of the inductivism which he defended – needed to be protected against the encroachment of *religious* dispositions of belief which were inconsistent with the probabilism, moderation, and empiricism appropriate to public life.

Thus at the foundational philosophical level Stephen’s critique of Mill broke from the earlier essay on Locke only to provide a fuller picture of the harmful intellectual approach with which these errors of first principle were associated. Of course, the critique of Mill was a more expansive affair than the engagement with Locke. In addition to objecting to the philosophical *base* which he believed was common to Mill and Locke, Stephen also raised concerns about what we might call the *superstructure* of Millian toleration. He believed that the reasonable conviction that “unlimited freedom of opinion” was a “very good thing” had, under Mill’s influence, become entangled with a host of other false and unsound views.³⁸⁵ Accordingly it was a central task for Stephen to dismantle the broader constellation of beliefs and attitudes of which toleration had wrongly come to be a part.

Before beginning to parse this host of views, it should be noted that when Stephen is picking

³⁸² Stephen, *Liberty*, 118. The essay “Liberty and Socialism” by the Whig-Conservative politician George Herbert reveals just how persuasive Stephen was in claiming the mantle of political many-sidedness from Mill; Herbert extensively cited Stephen *against* Mill in support of the pluralistic proposition that “everywhere we find a clashing of true considerations.” The article is reprinted in *Herbert Spencer and the Limits of the State*, ed. Michael Taylor (Bristol, 1996), 95-126.

³⁸³ Stephen, *Liberty*, 118, 205.

³⁸⁴ *Ibid.*, 4.

³⁸⁵ Stephen, *Liberty*, 29.

apart the medley of notions which had been incorporated into the “creed of liberty,” it can be unclear who is intended as the object of any specific stricture. Mill was the central figure against whom he wrote, not because every idea with which he found fault appeared in *On Liberty*, but because it was “absolutely necessary” to establish some fixed point, some “definite statement,” if one were to state “the grounds of one’s dissent from wide-spread and influential opinions.”³⁸⁶ Hence in the remainder of this section we face a question about when Mill himself was Stephen’s intended target and when he had in mind a vulgar Millian thinker left unidentified in the text. Fortunately, if the author under attack at any given moment can be uncertain, the content of the attitudes to which Stephen objected is relatively clear.

i) Empirical Errors

On Stephen’s accounting, the Millian or popular-Millian *Weltanschauung* had accreted several troubling superstructural elements. To begin, it contained empirical falsehoods. Two errors merit mention here: one in an overly optimistic and one in an overly pessimistic direction.³⁸⁷ To begin with the former: Stephen judged the claims of Mill and his school about the moral effects of intellectual-expressive liberty implausible. While, as section one showed, Stephen attributed important moral benefits to the open society, these benefits were largely *negative*, that is, they consisted in the removal of the impediments to sincerity, moral courage, and the ethical formation of beliefs that persecuting societies erected. But Stephen did not accept a set of more robust claims to the effect that the

³⁸⁶ Ibid., 5. The interpretive difficulty is compounded by the fact that Stephen considered Mill superior to the broader school that gathered around him; he was the “most reasonable” of the bunch, “far too rational” to endorse the most senseless vagaries that had attached themselves to the pro-religious-expressive-liberty position; *ibid.*, 112.

³⁸⁷ Though Stephen is often cited as a critic of Mill’s optimism, it is equally true that he was critical of Mill for exaggerating the deficiencies of England as it actually existed: “it is impossible to read [Mill’s writings] without being deeply and constantly impressed with the fact that he thinks very ill in the main of the world in which he lives”; Stephen, “Mr. Mill’s Essays [1],” *Saturday Review*, vol. 8 (9 July 1859): 46-8, 47. John MacCunn, one of the contingent of Idealist political theorists for whom Stephen was a shaping influence, agreed with Stephen’s seemingly contradictory lines of criticism, calling it the “paradox of Mill” that he maintained both incredible faith in what men could be and vexed contempt for what they were; see MacCunn, *Six Radical Thinkers* (London: Edward Arnold, 1907), 39-44, 68.

enshrinement of liberty *en soi* was sufficient to bring about a moral reformation of Britain. In particular he attacked what he took to be Mill's sunniness about liberty's power to produce vigorous character. While freedom of discussion did enable "that small class of persons whose opinions depend principally upon the consciousness that they have reached them by intellectual processes correctly performed" to avoid becoming holders of "dead beliefs," for the average person liberty had no such invigorating impact:

The notorious result of unlimited freedom of thought and discussion is to produce general scepticism on many subjects in the vast majority of minds. If you want zealous belief, set people to fight. Few things give men such a keen perception of the importance of their own opinions and the vileness of the opinions of others as the fact that they have inflicted and suffered persecution for them.³⁸⁸

The truth that these freedoms did "not tend to zeal" was not, of course, reason to recur to the energizing implements of "the wheel, the stake, and the gallows."³⁸⁹ But it was nonetheless important to recognize which goods liberty could furnish on its own and which would have to be generated from other sources. After all, was not the suspicion that the abolition of the old restrictions on opinion was inadequate in itself to generate probity and strength of conviction precisely why, as we saw in section one, both Stephen and Mill felt compelled to join the chorus of Victorians clamoring for more conviction and integrity in public life?

Because they offered so little resistance to the temptation to overestimate the power of liberty, the Millian faction was liable to a second empirical error: that of magnifying out of all proportion the existing threats to liberty in Britain. Mill had a propensity to portray British society as deeply intolerant despite its recent progress. To Stephen, Mill's disaffection resulted from the transformative impact on character which he attributed to intellectual liberty; for, given that he depicted liberty as a kind of moral panacea, if his compatriots had not become the wonderful figures which his paeans to liberty depicted, then it could only have been because true liberty was lacking. It

³⁸⁸ Stephen, *Liberty*, 29; Mill, *On Liberty*, 248.

³⁸⁹ *Ibid.*, 29, 56.

was in consequence of this line of thinking that *On Liberty* was an “altogether melancholy” book,³⁹⁰ full of dire pronouncements of Victorian intolerance. Yet to Stephen these complaints demonstrated a failure to appreciate the liberal character of their society. Indeed, in his initial review of *On Liberty*, he avowed “complete” “agreement” with the “general tone of the book” except for a befuddlement that Mill should have been so “melancholy” as to “humiliat[e]” his countrymen by berating them for ignorance of “doctrines which to so many persons appear to have long since passed from the sphere of discussion into that of action.”³⁹¹ *Contra* Mill, Stephen thought that a consensus had developed in favor of intellectual freedom, and this appraisal contributed to his great frustration at the law’s failure to track public opinion on these matters.³⁹² The reality was that England, far from being hostile to or “deficient in originality,” deserved approbation for its open and tolerant spirit.³⁹³

ii) *The Fetishism of Diversity and Its Corollaries*

The propensity to denigrate Britain as intolerant and conformist stemmed not only from outsized expectations about the benefits of liberty of thought and discussion, but also from a mistaken inference about what it meant to value this liberty. This brings us to a further element of the Millian outlook on toleration of which Stephen disapproved. In their alarmed estimates that “peculiarity of taste, eccentricity of conduct,” and “originality in thought” were being stymied,³⁹⁴ Mill and the popular Millians treated what was essentially a predictable byproduct of liberty – an increase in the diversity of opinions and lifestyles – as an end in itself. In brief, Stephen accused Mill of

³⁹⁰ Stephen, “Mr. Mill on Political Liberty [2],” *Saturday Review*, vol. 7 (19 Feb. 1859): 213-4, 214.

³⁹¹ “Mr. Mill on Political Liberty [1],” 186.

³⁹² According to Stephen, only “the least educated part of the clergy” and their minions among the “mercantile classes” truly exhibited any hostility to the free and tolerant *status quo*; Stephen, “Mr. Mill on Political Liberty [2],” 213. This rejection of Mil’s portrayal of the despotism of opinion reigning in England was common; see the articles in Pyle’s *Liberty: Contemporary Responses to John Stuart Mill*, 59, 215, 217, 229, 350-1.

³⁹³ Stephen, *Liberty*, 158.

³⁹⁴ Mill, *On Liberty*, 265, 268.

fetishizing diversity: “though goodness is various, variety is not in itself good”; “Mr. Mill worships mere variety.”³⁹⁵ Stephen’s dissent from Mill on this point was not equivalent to denying that the diversity of beliefs and characters was natural, nor that it was in many cases worthy of celebration.³⁹⁶ What concerned Stephen about this feature of the Millian perspective was that the identification of diversity as *ipso facto* good struck him as invalidating our capacity to make discriminations amongst the array of opinions on offer: Mill covertly “assume[d] people cannot be trusted to judge any variety or alteration upon its merits”; he took for granted that “the common standards of good and evil were so thoroughly wrong that if men exercised any discretion as to the varieties which they would encourage or discourage, they would do more harm than good, and that, therefore, in the present bad state of affairs the best thing to do was to encourage all varieties.”³⁹⁷ Stephen reckoned that a shallow, triumphalist form of pluralism in which one refused to critically assess the range of ideological and policy options on offer had crept into *On Liberty*.³⁹⁸

³⁹⁵ Stephen, *Liberty*, 30, 33.

³⁹⁶ Stephen was tolerant of, and even inclined to laud, the diversity of ideas and temperaments in a way we associate more commonly with Mill. “It is apparently part of the providential plan of life that men should differ endlessly”; “the facts of life are ambiguous. Different inferences may be drawn from them, and they do not present by any means the same general appearance to people who look at them from different points of view.” He treated those who complained that the “progress of religious discussion” and “political discussion” in British public life led to a “corresponding growth of differences of opinion” as relics of a more primitive political period. See Stephen, “Doing Good,” in *Essays by a Barrister, Reprinted from the Saturday Review* (London, 1862), 88; *Liberty*, 205; “Gladstone and Lewis,” 291.

³⁹⁷ *Ibid.*, 34. Morley feared the polemical force of this charge of fetishizing diversity and worked hard to refute the accusation that Mill “prizes...mere variety”; “Mill’s Doctrine of Liberty,” 127.

³⁹⁸ The charge of fetishizing diversity was used not only against Mill’s views on freedom of discussion but also against his advocacy of proportional representation, which was frequently decried for ascribing quasi-miraculous effects to the inclusion of non-mainstream opinions in parliament. Leslie Stephen’s denunciation of PR as “a system of bounties for encouragement of the belief in crotchets” reads like the deployment against *Considerations on Representative Government* of his brother’s line of attack against *On Liberty*; see Leslie Stephen, “The Value of Political Machinery,” *Fortnightly Review*, vol. 18 (Dec. 1875): 836-52, 844. See also Leslie’s *English Utilitarians*, vol. 3, ch. 2, §2-3, where he reiterates this argument against *On Liberty*. Finally, it is deserving of note that Leslie fashioned the perception that Mill made an idol of diversity into one of the most interesting cheap shots in the history of political thought. “Whatever the evils which accompany the subjection of women,” Leslie wrote, “there are at least two distinct public opinions. Women think differently upon politics and religion; they have a widely different moral standard; they are encouraged to form themselves on a different model, and are subjected to different principles of action. Now, if the divisions are suddenly removed, it may be that men’s morals would be purified and women’s intellectual standard raised; but it is also clear that a single code would prevail while formerly there were two....The change, so far as it could be carried out, would be a change distinctly in the direction of uniformity”; see “Social Macadamisation,” 153.

On Stephen's interpretation, Mill's fetishism of diversity had as its corollary two views which were even more troubling than this one. There was, at least, a grain of truth underlying the fetishism of diversity: diversity *had*, Victorians thought, accompanied the "progress of discussion" and the "rise of civilization"; to worship diversity was therefore an understandable error, a mistaking of the sign for the thing signified. Less excusable were two related propositions, which we might call the theses of *the equality of opinions* and of the *neutered public sphere*. Regarding the first: Stephen believed that Mill had cut out from under his feet any ground on which to say that some people's opinions were superior to others. He had rendered himself unable to acknowledge the plain truths that "till a man has carefully formed his opinions on these subjects, thought them out, assured himself of their value, and decided to take the risk of proclaiming them, the strong probability is that they are not much worth having."³⁹⁹ In his passion for liberty, Stephen thought, Mill had become blind to the fact that the beliefs of "a good man" who has "carefully studied" a subject were worth more than those of a "bad man" or an "ignorant preacher."⁴⁰⁰ Toleration did not mean that all opinions were created equal – although this seemed to be a lesson of *On Liberty*.

The second corollary thesis, which I labeled the *neutered public sphere*, is more difficult to capture. It amounted essentially to imputing an illusion of *conflictlessness* to Mill and the Millians; what they wanted, on Stephen's interpretation, was a public discourse in which harmony, rather than the competition of ideas, interests, and ways of life, was the norm. But the former was a fundamentally false picture of the nature of collective life: "struggles there must and always will be, unless men stick like limpets or spin like weathercocks"; "there are and there must be struggles between creeds

³⁹⁹ Stephen, *Liberty*, 53.

⁴⁰⁰ Ibid., 55-6. The revised edition of *Liberty, Equality, Fraternity* rescinded the attribution of this view to Mill, though Stephen maintained that it was true of the "popular school" which idolized him; on this point, the new edition read, "there was not really much difference between Mr. Mill and myself." Stephen cited a passage in Mill's *Autobiography*, which was published after the initial release of *Liberty, Equality, Fraternity*, as evidence of their accord on this point, though he need hardly have waited for Mill's memoirs to have known better: Mill's corpus is replete with judgments about better and worse ways of holding and forming opinions, including what is one of the most notorious features of his political theory: the endorsement of plural voting; see *Considerations*, ch.8.

and political systems”; “the intimate sympathy and innumerable bonds of all kinds by which men are united, and the differences of character and opinions by which they are distinguished, produce and must forever produce continual struggles between them.”⁴⁰¹ Support for toleration did not mean getting rid of contest and antagonism, but channeling it into more productive avenues than mere violence. Rightly understood, controversy had not disappeared since the end of religious warfare and state persecution, but had only been stripped of its “brutality.”⁴⁰² To illustrate the conflictual public sphere which he valued, Stephen appropriated the ubiquitous Victorian term “fair play.”⁴⁰³ Stephen elaborated at length, in typically punchy prose, on what this term encapsulated for him:

De Maistre somewhere says that the persecution which the Church had suffered from the syllogism was infinitely worse than all that racks and crosses could inflict; and the remark, though odd, is perfectly true....Civil war, legal persecution, the Inquisition, with all their train of horrors, form a less searching and effective conflict than that intellectual warfare from which no institution, no family, no individual man is free when discussion is free from legal punishment. Argument, ridicule, the expression of contempt for cherished feelings, the exposure of cherished fallacies, chilled or wounded affection, injury to prospects public or private, have their terrors as well as more material weapons and more definite wounds. The result of such a warfare is that the weaker opinion—the less robust and deeply seated feeling—is rooted out to the last fibre, the place where it grew being seared as with a hot iron; whereas the prison, the stake, and the sword only strike it down, and leave it to grow again in better circumstances. A blow bruises, and discolours for a time. Nitrate of silver does not bruise, but it changes the colour of the whole body for its whole life.⁴⁰⁴

Fortunately, this deep contestation between religious doctrines and political visions was not the only side of human existence. There were “more numerous and more powerful” “influences which tend to unite men and which give them an interest in each other’s welfare...than those which throw them into collision,” such that the “collisions” were surrounded “with acts of friendship and goodwill which confine them within limits and prevent people from going to extremities.”⁴⁰⁵ But this did not

⁴⁰¹ Stephen, *Liberty*, 60, 66, 94.

⁴⁰² *Ibid.*, 68.

⁴⁰³ “What is wanted is not peace, but fair play”; *ibid.*, 68.

⁴⁰⁴ *Ibid.*, 68-9.

⁴⁰⁵ *Ibid.*, 94.

make the collisions any less fundamental or inevitable. Social life was about sorting out one conflict after another, and this truth could not be wished away. Support for toleration was rightly based not in a utopian ambition that conflict should vanish, but in a more limited conviction that these contests ought to be resolved not in a violent but in a peaceful and truth-advancing way.

Whether such a depiction of the ineradicably antagonistic orientation of the public sphere would actually have disturbed a philosopher who declared that truth had to emerge “by the rough process of a struggle between combatants fighting under hostile banners” is disputable⁴⁰⁶; personally, I think that there was little daylight, except in tone, between the two on this issue. But Stephen’s perception that Mill’s theory could lead one to turn away from the combat of ideas and toward a more harmonious paradigm was widespread in the era; if he was wrong in attributing the thesis of the neutered public sphere to Mill the philosopher, he was right to attribute it to “Mill” the larger persona. For instance, Pollock stated as a well-known fact that “Mill proposes, by way of securing fairness, to give certain artificial advantages to the weaker combatants [in the contest of ideas], and seems to have persuaded himself that the conditions of the fight may be somehow rearranged so as to avoid the inevitable conclusion that...someone must come the worse off at the end.”⁴⁰⁷ Pollock, a good Fitzjamian, said this with disdain, but self-described Millians were happy to accept this depiction of Mill as an advocate for a kind of affirmative action for unconventional opinions that would correspond in the social-moral sphere to the “protectionism” that proportional representation offered to minority views in the legislative sphere.⁴⁰⁸ G.J. Holyoake, a working-class activist who conceived himself to be preaching the gospel of Mill, condemned Stephen’s outlook as

⁴⁰⁶ Mill, *On Liberty*, 254.

⁴⁰⁷ Pollock, “Review of *Liberty, Equality, Fraternity*,” *Fraser’s Magazine*, vol. 8 (July 1873): 86-97. 92. The review as a whole was laudatory.

⁴⁰⁸ See Christopher Kent, *Brains and Numbers*, 45.

“poor-law” or “inclement Toleration.”⁴⁰⁹ This was toleration that “carries a Refrigerator in its heart: it has a congealing compassion for new ideas, under which they commonly perish. Only the hardier sort live and bud in more genial days.”⁴¹⁰ To envision toleration on the model of a fair fight was “not only Hostile but shabby”; properly conceived, “toleration itself is aid to error as far as it goes...He who finds it against his conscience to aid opinion, not his own, is right to put it down.”⁴¹¹ In Holyoake’s eyes, what followed from Millian premises was a requirement of succor to those who championed minority views, even those of whose incorrectness one was most certain.⁴¹² Stephen’s model of public debate as a forum in which it was right and desirable that there be conquerors and conquered was merely the ethics of a persecuting society that had lost the courage to persecute. It was against this image of toleration that Stephen felt compelled to vindicate a more agonistic or conflictual version of public discourse. The nature of a regime of toleration was not that all views receive support or be placed on a footing of substantial equality; rather, the nature of a liberal system was only (in an analogy to boxing) that “precautions” be taken “to let the best man win.”⁴¹³ All toleration was, was citizens fighting for their ideas and agendas by arguments, rather than by arms.

iii) Social intolerance

Consideration of Stephen’s rejection of this harmonious paradigm brings us to the most notorious aspect of his thought on free discussion and the public sphere: his apology for “social

⁴⁰⁹ Holyoake, *Hostile & Generous Toleration: A New Theory of Toleration* (London, 1886), 5. This is a wonderful but sadly forgotten pamphlet.

⁴¹⁰ *Ibid.*, 5-6.

⁴¹¹ *Ibid.*, 7-8.

⁴¹² For an interpretation similar to Holyoake’s in the modern secondary literature, see Jill Gordon, “John Stuart Mill and the ‘Marketplace of Ideas’,” *Social theory and practice* (1997): 235-249.

⁴¹³ Stephen, *Liberty*, 68.

intolerance.”⁴¹⁴ Stephen was “utterly unable to agree with Mr. Mill” that “social stigma” was akin to “legal persecution,” and he endorsed the justifiability of strong expressions of disapproval toward those with whose opinions one did not “sympathise.”⁴¹⁵ It is worth dwelling on this aspect of *Liberty, Equality, Fraternity* at some length lest it be thought that with his stance on social intolerance Stephen was taking back with the left hand the freedom which he had given with the right.

The basis of his apology for social intolerance was moral-psychological: it was grounded in the observation that disagreement often involved dislike.⁴¹⁶ This was an empirical reality, but Stephen also gave it his normative assent. To take an issue under debate seriously was to recognize that we were in genuine *conflict* with those who disagreed with us, and to enter into a kind of combatant relationship with the other side.⁴¹⁷ To ask people to suppress all signs of the feelings that attended such a relationship would be to introduce moral distortion into people’s lives; it was equivalent to asking them to “for[get] that opinions have a moral side to them,” since so long as one believed, as Stephen did, that the formation of beliefs was an *ethical* matter, it was natural that one have negative judgments toward individuals whom one regarded as having committed a fault in this respect.⁴¹⁸ Moreover, the display of disapproval toward opinions which one believed to reveal deficiencies of character was a part of what it meant to engage in public life in a spirit of gravity and

⁴¹⁴ Ibid., 51.

⁴¹⁵ Stephen, *Liberty*, 52-3; Mill, *On Liberty*, 240.

⁴¹⁶ “The fact is that we all more or less condemn and blame each other....I cannot understand how a man who is not a Roman Catholic can regard a real Roman Catholic with absolute neutrality....How the question of whether he is right or wrong can be regarded as one indifferent to his general character and to the moral estimate which persons of a different way of thinking must form of him is to me quite inconceivable....Controversies of this sort go to the very core and root of life, and as long as they express the deepest convictions of men, those who really differ are and must be enemies to a certain extent, though they may keep their enmity within bounds”; Stephen, *Liberty*, 53-4.

⁴¹⁷ See e.g. Pollock’s interpretation of Stephen’s employment of “social intolerance” as a way of forcing the reader to acknowledge the fact “that the whole aim of all serious discussion is to form a strong collective opinion on one’s own side of the question, and to gain for one’s own side the advantages in social influence and otherwise which flow from a strong collective opinion”; Pollock, “Review of *Liberty, Equality, Fraternity*,” 91. A similar positive moralization of the fact that “every new idea...must offend a great mass of prevalent opinion, and must struggle for existence among the ideas already in possession of the ground” is in Ritchie; see *Natural Rights*, 193-5.

⁴¹⁸ Ibid., 53.

probity.⁴¹⁹

In other words, what worried Stephen most about Mill's prohibition on social intolerance was that it ran counter to the values of earnestness and sincerity which undergirded his support for the liberties of thought and the press in the first place. The fact that Mill had, to his mind, turned "liberty" against these values was indicative that *On Liberty* mistook true liberty for a pathological or "religious" version of it. Of course, unless this social intolerance were to be a form of completely ineffectual venting, it would have the effect of discouraging some kinds of speech; it would *limit* public expression in certain ways. In particular, "timid people" and frivolous folks who might wish to enter the fray but who were not really "prepared to fight" for their views would be deterred from speaking out.⁴²⁰ The *number* of voices weighing in on a question might be diminished relative to what it would be in the Holyoakean/Millian utopia of mutual encouragement among even the most antithetical views. But this reduction was not, in Stephen's eyes, an infringement on *liberty* properly-understood; to classify it as such was to commit a version of the fetishism which he decried. Liberty was not to be judged by whether some other variable – whether that be the *diversity* of ideas in circulation or the *number* of voices heard – was maximized.⁴²¹ Stephen's intellectual liberalism was not concerned with the multiplication of voices for its own sake but with securing the conditions in which new ideas could prove themselves worthwhile in the eyes of the public – conditions which, rightly or wrongly, he did not believe were undermined by social intolerance.

⁴¹⁹ "Complete moral tolerance is possible only when men have become completely indifferent to each other—that is to say, when society is at an end"; *ibid.*, 95. A similar idea was expressed by a reviewer of *Liberty, Equality, Fraternity* who was friendlier to Stephen than to Mill: "We all admit that society has no right to persecute an individual for his religious belief....[Nevertheless] our duty to abstain from expression of religious belief or disbelief – offensive, or it may be blasphemous, in the eyes of society – and, on the other hand, to avow it, is bound by the sincerity and strength of our convictions and consequent obligation to others. Society, on the other hand, is bound to listen when its sincerity is tested"; Herbert Cowell, "Liberty, Equality, Fraternity: Mr. John Stuart Mill," in *Liberty: Contemporary Responses to John Stuart Mill*, 298-320, 308. The essay was originally published in *Blackwoods Edinburgh Magazine*, Sept. 1873.

⁴²⁰ *Ibid.*, 52-3.

⁴²¹ In this way, Stephen can be usefully contrasted with the logic of Alexander Meiklejohn's later "democratic" rationale for free speech, whereby more speech does seem to be equated with more freedom; see Alexander Meiklejohn, *Free Speech and its Relation to Self-Government* (New York, 1948).

To understand why Stephen was confident that social intolerance as he understood it did not violate intellectual liberty, it is important to note the extent to which his defense of it was (what American First Amendment lawyers would call) “content-neutral.” In providing an apology for it against *On Liberty*, Stephen’s goal was not to unleash social pressure against a particular set of views which he disliked.⁴²² Instead, social intolerance as he portrayed it acted to discourage certain frivolous and unserious modes of utterance and to foster a more “ethical” (truthful, earnest) approach to public discussion; it would work, he seems to have thought, only against those people who did not hold their beliefs in an acceptable manner.⁴²³ In this respect, Stephen resembles those thinkers today who, concerned about the low quality of public discourse, wish to “elevate” and “purify” it without (they believe) taking a stand on the substance of the various beliefs themselves.⁴²⁴

Stephen’s defense of social intolerance thus had a “repressive” dimension insofar as it had the potential to diminish the quantity of voices raised on a question. But this was a repressiveness which, to his mind, stemmed directly from the values which undergirded his religious-intellectual libertarianism, and which did not undermine his (admittedly elitist and non-“maximalist”) stance on freedom of thought and discussion. To attempt to suppress social intolerance was a greater affront to liberal norms than to make peace with it as part and parcel of an agonistic public sphere.

Given the attention which has been paid to Stephen on social intolerance, it behooves us to make a

⁴²² Even “opinions on which the framework of society rests” needed to be attacked “in many cases.” What was objectionable was only that the bearer of such a searing critique should expect to be welcomed, rather than resisted, for putting forth his unconventional views; Stephen, *Liberty*, 52. This even-handedness with regard to substance is clear from the fact that, in the midst of his principal discussion of the subject, he licensed *both* the believer *and* the denier of innate ideas, *both* the Catholic *and* the anti-papist, to exhibit social intolerance so long as they were sincere in their positions; *ibid.*, 53-4.

⁴²³ Social intolerance was envisaged as a test that one held one’s beliefs earnestly and with due consideration, not a test of the substance of the belief: “No man has a right to give the signal for such a battle by blowing the horn, unless he has first drawn the sword and knows how to make his hands guard his head with it. Then let him blow as loud and long as he likes, and if his tune is worth hearing he will not want followers”; *Liberty*, 52-3. And see Cowell’s idea that social intolerance was a way of weeding out from the contest of ideas those speakers whose opinions were not backed by “real force of character”; Cowell, “Liberty, Equality, Fraternity,” 308.

⁴²⁴ Whether they are correct in so thinking is another story; Stephen’s own skepticism about dividing style and substance (covered in section one) casts some doubt on the matter.

further, often overlooked point: namely, that in truth he did not have anything approaching a *doctrine* on the subject. This area of his thinking is beset by tensions and confusions.

To begin with the more obvious difficulties. For one thing, in light of the considerations in section one of this essay “social intolerance” entailed a tightrope walk at the personal-psychological level – feelings of moral disapproval for certain views could not reach the point of making one deaf to the reasons and evidence that might tell in favor of those views, for this would be to violate the “ethics of belief.” Unfortunately, Stephen offered little practical guidance on how to succeed at this balancing act. For another, it is not clear whether there was a real difference between him and Mill on this point.⁴²⁵ After all, Mill never argued that the individual needed to put his feelings about the beliefs of others aside.⁴²⁶ Rather, what he objected to was something like extralegal *collective action* against holders of unpopular beliefs; it violated respect for liberty to try to bring out about the ostracism or silencing of minority views or lifestyles. Yet Stephen nowhere actually provided a positive argument for carrying personal distaste about beliefs to the brink of collective action. He did not argue for the intentional marginalization of smaller ideological groups by larger ones so much as urge that we should not “plaster...over” the hard sentiments that emerge from the confrontation of different worldviews.⁴²⁷ Although in the abstract Stephen expressed acceptance of what seem like collective expressions of disapproval, his examples stay at the more personal level of the hostility which he believes will be mutually felt by those who disagree about fundamental issues.

Beyond these difficulties, which are visible right on the surface of Stephen’s account, his notion of social intolerance was inadequate in several deeper ways. The first problem arises from the

⁴²⁵ In minimizing the distance between Stephen and Mill on social intolerance, I am in the company of Joseph Hamburger; see Hamburger, *John Stuart Mill on Liberty and Control* (Princeton, NJ, 2001). However, where Hamburger effects this *rapprochement* by assimilating Mill to the standard view of the authoritarian Stephen, I do so by pushing in the opposite direction, that is, by moving Stephen toward the standard image of the liberal Mill.

⁴²⁶ Social “penalties” for beliefs and behavior that were deemed vicious were consistent with an order of liberty so long as they were the “natural and, as it were, the spontaneous consequences of the faults themselves”; Mill, *On Liberty*, 278.

⁴²⁷ Stephen, *Liberty*, 54.

fact that, although he was critical of Mill for not maintaining a clear distinction between opinions and conduct, Stephen was himself not clear about whether the penalties of public opinion were equally appropriate to both belief and behavior, and his greater focus on the latter in these discussions seems to indicate that he saw defensible instances of the “moral coercion of public opinion” more as the manifestation of society’s disfavor toward “vice” than as means of keeping unpopular views from being expressed.⁴²⁸

Second: if it is not apparent what he thought the appropriate target of social intolerance was, it is also unclear how much of it he was truly prepared to accept. Most scholars have only noted one half of Stephen’s rejoinder to Mill: namely, the normative defense of social intolerance. However, as we saw in subsection (i) above, he also replied by denying that “the restraints of public opinion, the ‘social intolerance’ of which Mr. Mill gives such a striking account” were operative “at present.”⁴²⁹ Despite the harsh rhetoric in *Liberty, Equality, Fraternity*, Stephen’s response was never simply that social intolerance was a positive thing, but also that it was not in fact a significant feature of English society. Hence Stephen waffled between the claims that social intolerance had a positive function and that it was simply not to be worried about because of its contemporary weakness. This hesitation, in conjunction with the stringent “limits to the possibility of useful interference with morals, either by law or by public opinion” which he demanded “be carefully observed,” calls into question just how far Stephen’s famous defense of social intolerance can with consistency be called a *defense* at all.⁴³⁰ The dubious character of his apology for social intolerance is reinforced by the fact that at times Stephen himself painted a Millian picture of social ostracism oppressing thought, on

⁴²⁸ Ibid., 90-1; see also 9-10.

⁴²⁹ Ibid., 91.

⁴³⁰ Stephen, *Liberty*, 105-6. And see Smith, *Stephen, Victorian Rationalist*, 172-4.

which occasions he admitted that public opinion could become “tyrannical.”⁴³¹

Third: even insofar as Stephen can be understood as offering a positive rationale for social intolerance, this rationale was riven by a central divide. He gave, without any appearance of realizing the difficulty, two conflicting accounts of social intolerance with regard to the expression of beliefs. The first was what we might loosely call *majoritarian*, using this term not in an electoral sense but to indicate the widely-shared beliefs of a society.⁴³² Holders of majority opinions were justified in impressing upon dissenters the strong social support for their positions; they did not need, as he thought Mill wanted them to do, to pretend that their views on religion or politics were simply one among innumerable, undifferentiable others.⁴³³ In tandem with this justification, however, was a very different *elitist* one which stemmed from Stephen’s aforementioned convictions about the inequality of opinions. On this view, social intolerance was an instrument to be wielded by “men who really study these matters” against the “impudence and rudeness” of the average man who thought his beliefs were as good as anyone else’s even though he did “not understand” what he was “talk[ing] about.”⁴³⁴ This elitist apology for social intolerance decidedly did not license the unserious or unscholarly – whether they belonged to the majority or not – to chastise their “betters” for being of different views.⁴³⁵ Yet he does not appear to have recognized the contradiction between these two

⁴³¹ Mill was motivated “by a feeling – which we are afraid is but too well grounded – that, notwithstanding our political freedom, many causes are at work which tend to subject us to a tyranny far more searching, infinitely more powerful, and much more difficult to resist, than any which depends on merely material force”; Stephen, “Mr. Mill on Political Liberty [1],” 186. See also his exceedingly Millian alarm that “most writers are so nervous about the tendencies of their books, and the social penalties of unorthodox opinion are so severe, and are exacted in so unsparing a manner, that philosophy, criticism, and science itself too often speak amongst us in ambiguous whispers what ought to be proclaimed from the house tops”; “Buckle’s *History of Civilization*,” 471.

⁴³² For this majoritarian side of Stephen with respect to the law rather than public opinion, see Antal Szerletics, “The Theoretical Aspects of Legal Moralism,” *Silesian Journal of Legal Studies*, no. 1 (2009): 98-110.

⁴³³ Stephen, *Liberty*, 52-3. And see Ritchie, *Natural Rights*, 193-5; Montague, *Limits of Liberty*, 211-2; Froude, “Plea for Free Discussion,” 280.

⁴³⁴ Stephen, *Liberty*, 56-7.

⁴³⁵ “It is one thing to say, as I do, that after careful consideration and mature study a man has a right to say such and such opinions are dishonest, cowardly, feeble, ferocious, or absurd, and that the person who holds them deserves

defenses of social intolerance – one which empowered the majority to give vent to its collective “enmity” toward those who challenged it on points that went to “the very core and root of life,” and another which enabled the intellectual elite to assert the superiority of its views.⁴³⁶

In light of these difficulties, Stephen’s objections to Mill on social intolerance can only be said to be solidly anchored at one point: the sense that Mill’s refusal of intolerance at the social level corresponded on the moral-psychological plane to a requirement that individuals hold their beliefs in an untenable way, in which they were supposed to be committed to them while not ever allowing this commitment to spill over into disapproval of dissenters.⁴³⁷ Who was expressing the disfavor, about what, and to what degree – these were all ambiguous, to say the least.

iv) The Rejection of Neutrality

Liberty, Equality, Fraternity struck at one final tenet of the popular-Millian creed on freedom of thought and discussion, a tenet which Stephen regarded as the most damaging of all its errors. This article of the religious dogma of liberty was that intellectual-expressive freedom demanded the *neutrality* of the state in matters of belief. Though Stephen occasionally slipped into a neutralist idiom,⁴³⁸ he rejected the aspiration to neutrality enunciated by many strands of liberalism. He thought neutrality no more than a myth; this is the central theoretical lesson that he took away from

censure for having shown dishonesty or cowardice in adopting them, and quite another thing to say that everyone has a right to throw stones at everybody who differs from himself on religious questions”; *ibid.*, 56-7. Stephen was even willing, in certain moments, to suggest that it was impossible for a person of intellectual attainments to show genuine “moral intolerance” to the uneducated mass, since people were entitled to opinions only if they were formed in accordance with the exacting criteria of the ethics of belief. Here again we encounter the egalitarian potential of Victorian liberalism’s ethics of belief.

⁴³⁶ *Ibid.*, 54.

⁴³⁷ *Ibid.*, 53, 57.

⁴³⁸ Interestingly, it was especially in contending against the push by powerful Evangelical groups to use state institutions in India to convert the native population that this neutralist language came out in Stephen’s work; see e.g. “Christianity in India,” in *Essays by a Barrister*, 150-9, esp. 154, 159. Stephen bitterly resisted intrusions by Evangelical missionaries into the governance of India.

his Indian experience.⁴³⁹ His brother articulated Fitzjames's point-of-view with surpassing clarity:

[In India] we had enforced peace between rival sects; allowed conversion; set up schools teaching sciences inconsistent with Hindoo (and with Christian?) theology; protected missionaries and put down suttee and human sacrifices. *In the main, therefore, we had shown 'intolerance' by introducing toleration.* Fitzjames had been himself accused, on the occasion of his Native Marriages Bill, with acting upon principles of liberty, fraternity, and equality. His point, indeed, is that a government, even nervously anxious to avoid proselytism, had been compelled to act upon doctrines inconsistent with the religions of its subjects.⁴⁴⁰

For Stephen, it was “simply impossible that legislation should be really neutral as to any religion which is professed by any large number of the persons legislated for”; it was hypocritical to concoct arguments that skirted the reality, which “everyone who has to do with legislation must find,” that to construct “laws and institutions” involved choosing “principles” to which the champions of other principles had to “give way.”⁴⁴¹ In his countercharge to the enthusiasm for “neutrality” Stephen saw himself reminding “people [who] are not always aware of it” of the obvious truths implicit in their political practice,⁴⁴² but in fact liberals of his time were very aware of these truths and not at all shy about embracing them. On the whole they refused to equate the religious and intellectual liberty that they enjoyed with the position of state neutrality; one need only read Lecky's gripping portrayal – which he wrote to debunk the illusion of neutrality – of the British government weighing a variety of political, moral, and religious considerations before banning the suttee in India to see just how familiar Stephen's viewpoint on this subject was.⁴⁴³ For the mainstream Victorian liberal, a free and

⁴³⁹ While in many regards Stephen's thought changed in response to his time in India – for example, in his thinking about the defects of parliamentary regimes and party politics; his fears about democracy; his views on legal codification; his vision of rational political administration – as regards questions of intellectual and religious freedom it was really only in his determination to cure these liberties from the infection of neutrality that his experience in imperial government affected him. On the “imperial” viewpoint in *Liberty, Equality, Fraternity*, see e.g. Colaiaco, *James Fitzjames Stephen*, 153.

⁴⁴⁰ Leslie Stephen, *Life of Fitzjames Stephen*, 327.

⁴⁴¹ Stephen, *Liberty*, 40.

⁴⁴² *Ibid.*, 46.

⁴⁴³ Lecky, *Democracy and Liberty*, vol. 1, 532-40. For representative essays on the subject that made their argument in entirely domestic rather than imperial terms, see e.g. D.G. Ritchie, “The Moral Function of the State,” in *Herbert Spencer and the Limits of the State*, 167-82; T.H. Green, “Legislative Interference in Moral Matters,” in Green, *Collected Works*, 5 vols., ed. Peter Nicholson (Bristol, 1997), vol. 5, 31-4 (henceforth cited as *CW*).

tolerant state was to be defended because it was the *best* state, not because it was a neutral state.

Stephen's rejection of state neutrality put him not only in good stead with his contemporaries, but also placed him within a venerable tradition in the history of English political philosophy: Erastianism.⁴⁴⁴ During the religious conflicts of the seventeenth century Erastians asserted the supremacy of the state over the church in ecclesiastical matters, and in the succeeding centuries an Erastian empowerment of the state's authority in the domain of religious belief and church organization had become a central element of much Whig thought. As Stephen *qua* historian knew well, the Erastian elevation of the state had been an instrument for the *extension* of toleration against the right, claimed by the Anglican Church, to restrict worship and belief to the "true religion." This vindication of civil supremacy over religion in the interest of toleration was a feature of the most important work of English Erastianism, Hobbes's *Leviathan*, and given Stephen's admiration for Hobbes it is not surprising that his own understanding of toleration would follow more in Hobbes's footsteps than Locke's.⁴⁴⁵

Recognizing the "thoroughgoing Erastian" heritage of Stephen's thought is important for two reasons.⁴⁴⁶ First, it reveals how he could see himself as at once an upholder of state power and a proponent of religious liberty. Both his work in Indian legislation and his service as a barrister defending a Cambridge cleric from the "hoary fallacies which justify persecution" in ecclesiastical court primed Stephen to see the space of intellectual-religious liberty as a creation of the state rather

⁴⁴⁴ Few scholars have located Stephen within this tradition, although Smith does; Smith, *Stephen, Victorian Rationalist*, 233.

⁴⁴⁵ For Hobbes's support for toleration, see e.g. Richard Tuck, "Hobbes and Locke on Toleration," in *Thomas Hobbes and Political Theory*, ed. Mary Dietz (Lawrence, KS, 1990), 153-71; Alan Ryan, "A More Tolerant Hobbes," in *Justifying Toleration*, ed. Susan Mendes (Cambridge, 1998), 37-60; Mark Goldie, "The Reception of Hobbes," in *The Cambridge History of Political Thought, 1450-1700*, eds. J.H. Burns and Goldie (Cambridge, 1991), 589-615. On Stephen's admiration for Hobbes, see Colaiaico, *James Fitzjames Stephen*, 27.

⁴⁴⁶ Leslie Stephen, *Life of Fitzjames Stephen*, 221.

than, as on many liberal perspectives, a ratification of a pre-political condition or endowment.⁴⁴⁷ On this score Stephen, and the broad swathe of Whig-liberal opinion which embraced this view, contrasted sharply with the major strands of liberalism across the Channel; nineteenth-century French champions of toleration and expressive freedom, from Benjamin Constant to Jules Simon, tended to ground these policies in a set of individual rights beyond the purview of social power, and therefore to insist on state neutrality as a necessary correlate of a tolerant and free society.⁴⁴⁸ While the freedoms of religion and opinion were staple ingredients of liberalism in both countries, the French were warier of the state than was the Fitzjamian liberal who weighed so heavily in British political culture.

Second, Stephen's Erastianism endeared him to an unlikely group of readers: Idealist democrats. Writers of this school, imbued as they were with Hegel, wanted to restore the status of the state as society's central moral agent, reclaiming it from a diminished "night-watchman" position and reaffirming its standing to pursue a vision of the common good that was not reducible to a predetermined set of individual liberties. For democratic writers of the 1880s-90s who were keen to cast freedom of opinion in a way that was consistent with an expansion of the state, the Erastian picture of toleration as a grant of civil authority looked more congenial to their hopes of raising the dignity of the democratic state than a Lockean account of the sources of freedom – an account

⁴⁴⁷ Stephen, *Defence of Rowland Williams*, 324. And for a typically Erastian picture of the state's role in grounding liberty, see *Liberty, Equality, Fraternity*, 111: "[several preceding lessons] may all be summed up in this one, that power precedes liberty—that liberty, from the very nature of things, is dependent upon power; and that it is only under the protection of a powerful, well-organized, and intelligent government that any liberty can exist at all."

This opposition between an Erastian and a rights-based or contractarian notion of toleration parallels the issue in economic thought about whether the free market is to be thought of as an achievement of the state or as a pre-political order which the state can respect only by keeping out of it.

⁴⁴⁸ Constant, "The Liberty of the Ancients Compared with That of the Moderns" and *Principles of Politics Applicable to All Representative Governments*, in *Political Writings*, ed. Biancamaria Fontana (Cambridge, 1988); Simon, *La liberté*, second edition (Paris, 1859), part 4. For an excellent analysis of Constant's doctrine of neutrality, see Marcel Gauchet, "Préface: Benjamin Constant; l'illusion lucide du libéralisme," in Constant, *Écrits politiques*, ed. Gauchet (Paris, 1997), 9-110, 108-9.

which they, like Stephen, associated with Mill.⁴⁴⁹ Hence, in one of those ironies that mark the history of political thought, the concern of the antidemocratic Stephen to avoid a defense of the liberty of thought and discussion that would diminish the dignity of the state earned for him greater favor among some of the most profoundly democratic late-Victorian writers than the more democratic Mill.⁴⁵⁰

This question of whether the liberal state was identical to the neutral state was not an idle philosophical one. It had political ramifications beyond affecting Stephen's reception by different ideological groups. For one thing, the neutralist point-of-view was heavily invoked by proponents of the disestablishment of the Anglican Church.⁴⁵¹ Stephen, like not only many Tories and members of the Anglican establishment but also many liberals,⁴⁵² conceived of religious liberty and the justifiability of a church establishment (so long, of course, as this church was not persecutory) as separate issues. An established church was neither required nor prohibited on principles of abstract right, but was an institution subject to the same sort of contextually-specific, weighing-and-balancing practical reasoning as any other. Stephen thought that in most cases a religious establishment would be beneficial, both because of the general importance of faith to a society's moral health and because (as touched on above) a strict "division between Church and State" had the negative consequence of giving the impression that "the State" and citizens in their "political capacity" were to ignore

⁴⁴⁹ See e.g. Montague, *Limits of Liberty*, 188. For a similar thought in the modern scholarship see also Abram Harris, "John Stuart Mill's Theory of Progress," in *Mill's Social and Political Thought*, vol. 4, 17. To my knowledge Nicholson is the only scholar who has noted the Idealists' preference for Stephen over Mill as a theorist of toleration; he could have pressed the point even further, though, since he touches on it only briefly and with regard to D.G. Ritchie alone. See Nicholson, *Political Philosophy of the British Idealists*, 294.

⁴⁵⁰ "Insofar as this principle [of the absolute separation of church and state] is accepted and acted upon with real good faith, the State will be degraded"; Stephen, *Liberty, Equality, Fraternity*, 45.

⁴⁵¹ See e.g. Timothy Larsen, *Friends of Religious Equality: Nonconformist Politics in Mid-Victorian England* (Rochester, NY, 1999), esp. chs. 3-4.

⁴⁵² Though not his brother; see "Suppression of Poisonous Opinions," 436. Though he opposed his elder sibling on the practical point, Leslie did agree that toleration was a separate issue analytically from the question of state neutrality; see *History of English Thought in the Eighteenth Century*, vol. 2, 145.

everything but “mere police functions.”⁴⁵³ Naturally, the judgment could go the other way; though Stephen made disparaging remarks about the religious life of the United States,⁴⁵⁴ he never suggested that the American model of non-establishment was illegitimate. His hostility to the neutralist perspective among the disestablishmentarians of his era was, therefore, continuous with his dismissal of the *a priorist* Lockean framework on the grounds that it rendered impossible critical inquiry into the costs and benefits of various political arrangements.

Even more fundamental than these questions of ecclesiastical politics, Stephen rejected the neutralist paradigm from a desire to protect the right of the British government to have an active domestic policy, to be able to embark on projects on behalf of the social good. Rightly or wrongly, Stephen was convinced that a consistent commitment to neutrality involved an unflinching libertarianism that precluded any positive action by the government beyond the barest police functions. “To force an unwilling person to contribute to the support of the British Museum is as distinct a violation of Mr. Mill’s principle as religious persecution,” Stephen insisted, and he went on to give an illustration that was particularly germane in a decade when the national public education system was being formed: “The difference between...paying a single shilling of public money to a single school in which any opinion is taught of which any single taxpayer disapproves, and the maintenance of the Spanish Inquisition, is a question of degree”; the former, he held, “infring[ed] the principle of liberty as stated by Mr. Mill” no less fundamentally than the latter.⁴⁵⁵ Consequently,

⁴⁵³ Stephen, *Liberty*, 45.

⁴⁵⁴ *Ibid.*, 45.

⁴⁵⁵ *Ibid.*, 12, 37. The question of whether Mill did in fact endorse a neutralist form of liberalism is a difficult one; from his corpus quotes on both sides of the issue can be drawn. On the one hand, his concern that political institutions be made to instantiate the proper “spirit” seems coincident with Stephen’s verdict that all legislation had to rest on principles and was therefore sectarian; see e.g. Mill, *Considerations*, 478. On the other, Mill’s discomfort on precisely this subject of state direction of education in chapter five of *On Liberty* is one of several instances which support Stephen’s worry that liberty *à la Mill* pushed one toward desiring a diminished role for the state.

On Liberty, despite Mill's own intentions, amounted to an "attack on all government whatever."⁴⁵⁶

The only alternative to such a reductive take on the state as the principle of neutrality yielded was to admit that "governments ought to take the responsibility of acting upon such principles, religious, political, and moral, as they may from time to time regard as most likely to be true."⁴⁵⁷

The principle of neutrality was, for Stephen, a tragic blunder. How could such a disastrous dogma have emerged? It was, in Stephen's eyes, another manifestation of the attitude which underlay the expansion of the theory of toleration to include the vision of an unconflictual, harmonious public sphere. This attitude was an aversion to accepting the fact that – no matter how much progress in "civilization" and "discussion" had been made – politics in an ideologically diverse society (such as Britain was and seemed destined to remain) could not satisfy everyone. The freest and most liberal nation would still contain winners and losers, and the losers would submit and adapt because they *had to*. There was no utopia in which "compulsion may be laid aside," in which consensus would replace coercion.⁴⁵⁸ Force was not about to vanish from the world of politics, not even in the progressive nations of "Europe and America."⁴⁵⁹ Stephen objected, on the grounds that the "reasonable man" had a moral duty to face "existing fact[s]" with "as little partiality as possible," to such illusions as that force was exiting the world of politics.⁴⁶⁰ In modern, free, tolerant states no less than in primitive, despotic, overtly violent ones, decisions had to be made, which meant that the losing side was forced to submit: "parliamentary government is simply a mild and disguised form of compulsion. We agree to try strength by counting heads instead of breaking heads, but the principle

⁴⁵⁶ Stephen, "Laws of England," 474.

⁴⁵⁷ Stephen, *Liberty*, 37.

⁴⁵⁸ *Ibid.*, 20.

⁴⁵⁹ *Ibid.*, 20.

⁴⁶⁰ *Ibid.*, 154. To drive home his point about the persistence of force in modern politics, he satirized Mill's dictum that the despotism of "an Akbar or a Charlemagne" was needed only in "backward states of society": "President Lincoln attained his objects by the use of a degree of force which would have crushed Charlemagne and his paladins and peers like so many eggshells"; *ibid.*, 21. And see Mill, *On Liberty*, 224.

is exactly the same....The minority gives way not because it is convinced that it is wrong, but because it is convinced that it is a minority.”⁴⁶¹ The triumph of toleration and the extension of liberty that had been consolidated over the course of the nineteenth century, salutary as they were, had not changed the facts that force was a bedrock element of politics and that “the principal object of political argument” was not to eliminate it but to “direct that power aright.”⁴⁶²

As was his custom, Stephen expressed the point in a polemical manner, but the substance itself was commonplace. The nineteenth century had seen a spate of theories and movements that promised a completely consensual and noncoercive society; and it had seen philosophies of history which predicted that force would disappear as the march of liberty and reason advanced. In response, less utopian liberals felt compelled to remind their fellows that the freer and more just societies they had come to inhabit still rested, as did all others, on force. It should be remembered that the soberest and most moderate of Victorian political tomes, Sidgwick’s *Elements of Politics*, closed with the following words:

It is important to see clearly that a form of government which shall enable every one to “obey himself alone” is chimerical. The coercion, by physical force in the last resort, of well-intentioned adults, is an evil which we cannot hope to eliminate by any constitutional reforms; though to diminish it without sacrificing other benefits is doubtless among the most legitimate and important aims which constitutional reformers can propose to themselves.⁴⁶³

This admonition contained more of *Liberty, Equality, Fraternity* than of *On Liberty*. Disciple of Mill that he was, on this question Sidgwick stayed close to Stephen.

Conclusion

⁴⁶¹ Stephen, *Liberty*, 21. See also “Parliamentary Government [1],” *Contemporary Review*, vol. 23 (1 Dec. 1873): 1-19, 5.

⁴⁶² *Ibid.*, 21.

⁴⁶³ Sidgwick, *Elements of Politics*, second edition (London, 1897), 377-650.

Stephen has been called “a great dissenter” from the orthodoxies of his day.⁴⁶⁴ This is true, but only if taken in the right spirit. On the issue of toleration and expressive freedom, his dissent was of a finely targeted kind. He criticized the most prominent exponent of a “popular,” “quasi-religious” current of the political culture, but he did so on behalf of what he believed (with much justice) to be the mainstream philosophical standpoint of mid-Victorian England. He was, for the most part, at home in a political-theoretical world that was liberal, consequentialist, and historicist all at once.

Indeed, the critical side of Stephen that we have been exploring in this section did not detract from his standing as a theorist of toleration; with the exception of dyed-in-the-wool Millians such as Morley, it seems rather to have worked in tandem with the positive side examined in section one to enhance his standing. Though it is frequently taken for granted that *On Liberty* is an “archetypal exposition of the philosophy of Victorian liberalism,”⁴⁶⁵ many Victorian liberals cherished the religiously and intellectually free society that they inhabited without thinking that *On Liberty* had delivered the definitive statement on the nature of that society. Stephen spoke for these liberals, if perhaps with a more contrarian tone than they themselves would have adopted.

Like his positive account of toleration, Stephen’s critique of Mill was multi-dimensional. Deepening his investigation into Lockean toleration, he charged Mill with founding his intellectual-religious libertarianism on a philosophically implausible basis; and he further accused Mill of distorting the theory of free thought and a free press by connecting it to an array of problematic attitudes and policies. In conclusion, however, it is worth noting one criticism which we might have expected from Stephen but which, revealingly, he did not in fact make. As has been mentioned, Stephen was skeptical of democracy. Yet he kept his criticisms of democracy separate from his

⁴⁶⁴ Colaiaco, *James Fitzjames Stephen*, 214.

⁴⁶⁵ Jones, *Victorian Political Thought*, 35.

critique of the Millian creed of free discussion. In this regard he was a more careful reader of Mill than scholars today, who frequently assert that Mill saw a tight conceptual connection between democracy and the expressive freedoms.⁴⁶⁶ Mill and Stephen expressed opposed views on the prospects of democracy in Britain, but they were equally reluctant to treat intellectual-expressive liberty as a *democratic* proposition. Although their lifetimes witnessed both a great expansion of the suffrage and the consolidation of press freedom, Mill and Stephen were alike in treating the freedoms of thought and discussion as values that were independent of the questions of the proper extension of voting rights and the shape of the British state. In this approach they were, despite their differences, both in accord with the mid-Victorian liberal milieu; in contrast to France,⁴⁶⁷ it was not until the Idealists of the 1890s that the attempt to derive rights of speech and thought from the ideal of democracy itself gained traction.⁴⁶⁸

This common absence in their theories stands as a reminder of what has been a major theme: namely, that for all the ways in which Stephen and Mill were at odds, their “points of agreement” were indeed “important and numerous.”⁴⁶⁹ Recent scholarship has emphasized the bitterness of their dispute, but this is to tell only a part of the story. It was only because they shared so much common ground that their differences felt so acute.

⁴⁶⁶ Some scholars even assert that Mill tried to ground expressive freedom in democracy itself; see e.g. K.C. O'Rourke, *John Stuart Mill and Freedom of Expression*, 117, 185; Nadia Urbinati, *Mill on Democracy* (Chicago: University of Chicago Press, 2002), 73. Thomas Scanlon is one of the few modern commentators who has rightly noted that Mill meant to develop a theory of free expression that was independent of types of government; Scanlon, “A Theory of Freedom of Expression,” *Philosophy & Public Affairs*, vol. 1 (1972): 204-226, 206.

⁴⁶⁷ A democratic logic for free speech had a powerful grip on French political theory under the Second Empire and Third Republic, with versions of it put forward by the likes of Léon Marillier, Lucien-Anatole Prévost-Paradol, Eugène Pelletan, and Charles Dupont-White, among others.

⁴⁶⁸ See e.g. D.G. Ritchie, *Natural Rights*, ch. 8; “The Rights of Minorities,” in *The British Idealists*, ed. David Boucher (Cambridge, 1997), 142-55. This democratic defense has been an important feature of modern American and French political theory, as in the work of authors as varied as Alexander Meiklejohn, Joshua Cohen, and Claude Lefort.

⁴⁶⁹ Stephen, “Mr. Mill on Political Liberty [1],” 187.

PART TWO

Representation

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Chapter Three

Diversity without Democracy, The Theory of the Variety of Suffrages, Part One: Institutions and Sociologies

In 1914, one Philip Arnold Gibbons of St. John's College, Oxford won the prestigious Gladstone Essay Prize for a composition in which he surveyed the history of British thought about parliamentary representation.⁴⁷⁰ Ironically, *Ideas of Political Representation in Parliament, 1660-1832*, despite earning an award named for one of the statesman most closely associated with the rise of British democracy, opened with a sympathetic description of the “unreformed parliament,” that is, the far-from-democratic system which prevailed until the First Reform Act of 1832 and in which the suffrage was both highly restricted on the whole and highly varied by the different customs and regulations that obtained in different constituencies.

More interesting, though, than the seeming incongruity between Gibbons's appreciative depiction of the unreformed parliament and the democratic credentials of the prize was the particular form which his appreciation took. For Gibbons avoided the notes commonly played in apologies for aristocratic government – the nobility, independence, and wisdom of the rulers; the farsightedness of aristocracies in comparison to the fickle and unstable desires of the mob; the concentration upon high objects as opposed to base and material goods. What he valued about the unreformed system was, instead, its *representativeness*: “Speaking generally, it may be said that the unrepresentative character of the House has been considerably overrated, and that on the whole it represented fairly well such public opinion as there was in England”; theories of representation from the time had been correct in “generally recogniz[ing] the representative character of the House of

⁴⁷⁰ According to the Oxford Student Handbook from the previous year, the prize was given for an essay “on some subject connected with either Ecclesiastical History after 461 A.D., or the Political and Constitutional History of the British Isles, or Political Theory,” and it came with an award of £20 worth of books; *Student's Handbook to the university and colleges of Oxford* (Oxford: Clarendon Press, 1913), 216.

Commons.”⁴⁷¹ The eighteenth-century parliamentary system “was a good one as systems go, for it allowed free play for effective political forces...the political machinery provided a sufficient channel for the really efficient forces of political thought.”⁴⁷² His forebears who had boasted of living, in contradistinction to their unfortunate European neighbors, under a “representative government” had not been mere dupes or fools.

Gibbons’s remark about the representative character of the unreformed parliament had a further strange feature. This was its suggestion that he was offering an assessment which would have struck his contemporaries as unfamiliar or incredible. But this was hardly the case; like many a scholar since, Gibbons was inflating the novelty of his thoughts. His judgment that parliament had not needed to await the advent of a democratic franchise to become *representative* was a commonplace one. For example, on this topic he not merely echoed the spirit of, but likely plagiarized, one of the eminent historical tracts of the period. The very first chapter of Leslie Stephen’s epic *English Utilitarians* had made the point in almost identical words.⁴⁷³ Although the old arrangements wound up, by the second quarter of the nineteenth century, in desperate need of transformation, it would be wrong, Stephen had alleged, to assume that until recently parliament had simply failed in its mission to represent the nation.

How could such authors as Gibbons and Leslie Stephen, writing in a (mostly) democratic Britain, look back on their country’s undemocratic past with sympathy for its representativeness? However implausible or counterintuitive this appraisal may sound to us today, these authors could appeal to a robust tradition of thought about representation, one with centuries-old roots that would reach its apogee in an explosion of institutional designs and constitutional theories during the middle

⁴⁷¹ Gibbons, *Ideas of Political Representation in Parliament, 1660-1832* (Oxford: B. H. Blackwell, 1914), 8, 11.

⁴⁷² *Ibid.*, 10.

⁴⁷³ In the eighteenth century “on the whole, the system was a very good one – as systems go....It allowed free play to the effective political forces....The political machinery provided a sufficient channel for the really efficient force of public opinion”; Leslie Stephen, *English Utilitarians*, vol. 1, 16.

decades of the nineteenth century. Appropriately for this dissertation, this approach to representation derived much of its power from the perception of and concern for diversity.

This vision of representation is what I will call, depending on the particular aspect being emphasized at a given moment, the *mirror* theory or the theory of the *variety of suffrages*. The former appellation corresponds to the desired end or outcome for the composition of the legislature – namely, that it should constitute an accurate image of the society for which it made laws. The latter, however, pertains to the level of means or technique – namely, that variation in electoral regulations across constituencies was the proper method for bringing the assembly into descriptive conformity with society. (The two labels also correspond to a difference between genus and species; as the succeeding chapters show, one could hold that resemblance to the nation at-large was a central virtue of the legislative body without believing that electoral differentiation was the best mechanism for achieving it. For the purposes of this chapter, though, the two sets of terms can largely be used interchangeably.)

It is the goal of this and the following chapter to reconstruct and analyze this approach to representation, with special attention to themes related to ideological diversity. The next section sketches the origins and development of the mirroring school up through the First Reform Act. The longer succeeding section of this chapter and chapter four combine to address the aforementioned climax of this theory in the decades leading up to the Second Reform Act: the former canvasses and classifies various institutional schemes, most of them forgotten today, to which this theory gave rise during these years, and also interrogates the sociological premises on which these schemes were founded; the latter examines the set of values which motivated the creation of these schemes, as well as criticisms of and tensions between these values.

1) Mirroring and Electoral Diversity before the First Reform Act

As Quentin Skinner and Eric Nelson have recently shown, mirror theories of representation have been a critical element in British political discourse from the time of the English Civil War.⁴⁷⁴ As conflict arose between king and parliament in the early 1640s, supporters of the parliamentary side argued that only an assembly could *represent* the country because only a numerous body, and not the single person of the monarch, could attain a likeness of or resemblance to the “whole body of the State” in “all parts.”⁴⁷⁵ Because parliament but not the monarchy had the capacity to re-present or capture the people in miniature, government by the former was representative while government by the latter was not, and therefore government by the former but not by the latter could be expected to respect and further the interests of the whole people. The resonance of these claims about the importance of the descriptive nature of the assembly’s representation continued in eighteenth-century clashes over the rights of parliament versus the prerogatives of the monarchy, especially during the crisis that precipitated the American Revolution.

These early, anti-monarchical formulations of the mirror theory of representation were not particularly concerned with the operation of the actual electoral system, though over the course of the eighteenth century an “Old Whig” view, articulated among others by Burke, of the connection between the descriptive satisfactoriness of the Commons (its status as an “express image of the feelings of the nation”⁴⁷⁶) and the traditional, inherited arrangements for the regulation of the suffrage began to appear.⁴⁷⁷ These arrangements were in essence a motley and uncoordinated

⁴⁷⁴ This paragraph recapitulates findings from Quentin Skinner, “Hobbes on Representation,” *European Journal of Philosophy*, vol. 13, no. 2 (2005), 155-84; and Eric Nelson, *The Royalist Revolution: Monarchy and the American Founding* (Cambridge, MA: Harvard University Press, 2014), ch. 2.

⁴⁷⁵ These quotes are taken from an exemplary parliamentary tract, Henry Parker’s *Observations upon some of his Majesties late Answers and Expresses* (London, 1642).

⁴⁷⁶ Burke, *Thoughts on the Cause of the Present Discontents*, in *Select Works of Edmund Burke*, 4 vols. (Indianapolis: Liberty Fund, 1990), 118.

⁴⁷⁷ Samuel H. Beer “The Representation of Interests in British Government”; See also J.R. Pole, *Political Representation in England*, part 4, ch. 4; John Burrow, *Whigs and Liberals*, 117-9.

assortment of local customs which had, in Burkean language, *grown* rather than been *made*.⁴⁷⁸ This earlier variant of the theory, then, consisted of a kind of organicist and *ex post facto* justification: it was directed toward showing that the country *already possessed* a set of electoral institutions that translated the nation in all its diversity into the Commons. As the influential theologian and early utilitarian philosopher William Paley lovingly portrayed the electoral-representative system in 1785: “By annexing the right of voting for members of the House of Commons to different qualifications in different places, each order and profession of men in the community become virtually represented”; in this way “the irregularity in the popular representation,” however much it may have offended against the instinct for symmetry and order, guaranteed that “the condition, wants, and occasions of the people...[in] every quarter” were reflected in the legislature.⁴⁷⁹ Consequently, if one could see past the seeming “confusion in which it confessedly lies,” one would recognize “the variety of tenures and qualifications, upon which the right of voting is founded” to be a political blessing, for this variety “tends to introduce into parliament a corresponding mixture of characters and professions.”⁴⁸⁰

Despite this long history, however, it was not until 1818 that the archetypal theoretical coupling of the *end* of a composition of the Commons that mirrored society in its diversity with the *means* of electoral variety arrived in the form of an essay by the Whig philosopher, historian, and MP James Mackintosh.⁴⁸¹ Mackintosh’s statement of the view was the one that would carry the most weight among the mid-Victorian cadre of authors who occupy the bulk of this chapter. What gave this article a special salience was not only the precision and clarity of Mackintosh’s statement, but

⁴⁷⁸ See e.g. Edward Porritt, *The Unreformed House of Commons: Parliamentary Representation before 1832*, revised edition, 2 vols. (Cambridge: Cambridge University Press, 1909), vol. 1, part 1.

⁴⁷⁹ Paley, *The Principles of Moral and Political Philosophy*, foreword by D.L. Le Mahieu (Indianapolis: Liberty Fund, 2002), 332-3, 342.

⁴⁸⁰ *Ibid.*, 345-6.

⁴⁸¹ James Mackintosh, “Universal Suffrage,” *Edinburgh Review*, vol. 31, no. 61 (Dec. 1818), 165-203.

also a crucial change in the context in which it was delivered relative to its earlier expressions. Where the antagonist of the mirror theory on its first appearance and in many of its eighteenth-century manifestations was monarchy, Mackintosh's adversary was democracy. He was fighting not royal power, but the philosophic-radical program of universal suffrage championed by Bentham.⁴⁸²

Mackintosh's rejoinder to Bentham, analogously to Macaulay's more famous "Whig" rebuttal to James Mill the following decade, began with a methodological dissent.⁴⁸³ Rather than homing in as Bentham had done on the matter of accountability and control, of restraining the sinister interest of MPs and aligning their interests with those of their constituents, Mackintosh argued that the primary question for the science of representative assemblies was sociological in nature: "To understand the principles of its [the 'representative assembly's'] composition thoroughly, we must divide the people into classes, and examine the variety of local and professional interests of which the whole is composed...whether that interest arises from inhabiting the same district, or pursuing the same occupation."⁴⁸⁴ From this preliminary sociological inquiry one unavoidably made the discovery that society was a *diverse* entity – "in a great state, even that part of the public interest which is common to all classes, is composed of a great variety of branches" – and from this perception of diversity Mackintosh immediately deduced that "the proper composition of the House of Commons," as well as "the justice of the government," entailed that "each of these classes must be represented" directly.⁴⁸⁵ The great Whig's conclusion, in short, was that the chief object of that branch of political science which concerned representative institutions was one to which the philosophic radicals paid scant attention: the adjustment of the composition of the House to match social reality.

Fortunately, in this case theory already coincided with practice. The electoral variation that

⁴⁸² Bentham, *Plan of Parliamentary Reform, in the Form of a Catechism* (London: R. Hunter, 1817).

⁴⁸³ On that more famous debate, see note 94 in chapter one.

⁴⁸⁴ Mackintosh, "Universal Suffrage," 175.

⁴⁸⁵ *Ibid.*, 181, 175.

England possessed was superior to what any philosopher-statesman, who would have felt compelled to “act upon some uniform principle,” could have instituted.⁴⁸⁶ Mackintosh’s lesson was to appreciate the arrangements with which history had blessed the country: “we ought not to exchange our diversified elections for any general qualification.”⁴⁸⁷ “A variety of rights of suffrage,” he concluded trenchantly, “is the principle of the English representation.”⁴⁸⁸

The variety of suffrages was vital to the prospect of *representative* government because “the labouring classes” and “lowest classes” so outnumbered the rest of society that a democratic franchise risked allowing the whole of the assembly to be returned by this “perpetual majority.”⁴⁸⁹ The sociologically satisfactory “representation of *classes*” would give way to the unrepresentative rule of “*numbers*.”⁴⁹⁰ Mackintosh illustrated his fear of working-class monopoly of the legislature with a (well-chosen, given English anti-papist sentiment) thought-experiment: he asked what would happen to the “Protestant minority” if “we suppose Ireland to be an independent state.”⁴⁹¹ By virtue of the great disparity in numbers between the two religions, the Catholics who comprised “four-fifths of the population” could bar the Protestants from entry into the “House of Commons” and thereby

⁴⁸⁶ Mackintosh, “Universal Suffrage,” 182. He clarified with a Burkean metaphor: “A builder can seldom imitate, with success, all the fantastic but picturesque and comfortable irregularities, of an old mansion, which through a course of ages has been repaired, enlarged, and altered, according to the pleasure of various owners.”

⁴⁸⁷ Ibid., 182. This did not mean that Mackintosh rejected incremental change; he believed, rather, that the traditional English principle of representation did contain a dynamic element: “As every new class arose, it was fastened to the government by those constitutional links. This left no class politically powerful, who did not visibly draw their power from the Constitution.” Consequently, in response to Lord John Russell’s reenergizing of the Whig movement for Reform in 1820, Mackintosh declared in favor of the “addition of twenty Members to the House of Commons, to be chosen by the most opulent and populous of the communities which are at present without direct representation; with such varieties, in the right of suffrage, as the local circumstances of each community might suggest, but in all of them on the principle of a widely diffused franchise.” See Mackintosh, “Parliamentary Reform,” *Edinburgh Review*, vol. 34, no. 68 (Nov 1820), 481, 469.

⁴⁸⁸ Mackintosh, “Universal Suffrage,” 180. And see Mackintosh, “Parliamentary Reform,” 469-71.

⁴⁸⁹ Mackintosh, “Universal Suffrage,” 186.

⁴⁹⁰ Ibid., 185.

⁴⁹¹ Ibid., 184.

“exclud[e] them from all political privilege.”⁴⁹² If the reader found the prospect of such Catholic domination in Ireland to be a deviation from “just or equal government,” then he was bound to reject electoral democracy in England as well, for even if the groups of “oppressors and oppressed” would differ in the latter instance (namely, not on religious but on socioeconomic lines), the fundamental dynamics of exclusivity and unrepresentativeness would be the same.⁴⁹³

Importantly, Mackintosh was clear that his argument, although prompted by Bentham’s espousal of democracy and combating most intently the democratic alternative,⁴⁹⁴ also had as its target the political orientation at the opposite extreme. In truth, the chief wrong in the Benthamite creed of “uniform universal suffrage” pertained not to the second adjective but to the first; uniform *restricted* suffrage was likewise an evil.⁴⁹⁵ The problem with uniform restricted suffrage was that, since it “must incline towards independent property, as being the only ground on which it can rest,” it would deny the lower orders access to seats in the assembly; “true popular election” would no longer take place in any constituencies.⁴⁹⁶ Instead of a representative legislature, this arrangement would yield “a mere aristocracy” – which, he remarked, might very well suit the “situation and temper of the French nation” or please “Tory writers,” but which was unsuitable for British soil.⁴⁹⁷ Thus, while the occasion for Mackintosh to theorize about representation was to refute the radicals,

⁴⁹² Ibid., 185.

⁴⁹³ Ibid., 185.

⁴⁹⁴ Ibid., 182.

⁴⁹⁵ “We prefer this general principle of our representation to *any* uniform right of suffrage”; *ibid.*, 180. My italics.

⁴⁹⁶ Ibid., 181.

⁴⁹⁷ Ibid., 181. At the time of Mackintosh’s essay France was under the Restoration regime of Louis XVIII which followed the downfall of the Napoleonic Empire. During the Restoration the suffrage was highly restricted; about 100,000 men were enfranchised out of a population of nearly 30,000,000, and there were notoriously more *fonctionnaires* than voters. The mid-century successors of Mackintosh whom we will encounter later in this chapter would likewise contrast their schemes favorably with the exclusiveness of the French suffrage, but in that case they had in mind the July Monarchy which succeeded the Restoration. While the July Monarchy’s electoral regulations were notoriously restrictive, they were in fact twice as extensive as the Restoration’s.

the upshot of his theory was much broader. This was that, regardless of where one drew the line, the uniform suffrage was *en soi* a crucial mark against a government's representativeness. Whatever other virtues it might have, a regime with electoral uniformity would have an objectionably classist and exclusive character.⁴⁹⁸

By the first third of the nineteenth century, then, the mirror theory of representation had traversed a large distance since its inception in 1640s antiroyalism. In the hands of the preeminent Whig intellectual post-Burke,⁴⁹⁹ the political salience of the principle that the legislature faithfully transcribe or re-present society in all its parts was not to favor parliamentary over personal rule, elected legislative over hereditary monarchical power. To Mackintosh the mirror theory was not an instrument for diminishing kings and exalt assemblies, but rather a reason for favoring one set of electoral rules over another; in his hands the mirror theory was a way of proving that representativeness could only be ascribed to a variegated as opposed to a uniform regulation of the suffrage.⁵⁰⁰

Before leaving Mackintosh, two further aspects of his theory of representation should be mentioned. First, it is worth noting explicitly a feature that the reader may have gleaned from the discussion of religious divisions above: namely, that Mackintosh was operating with a wide notion of "class." This feature is important because it will persist in subsequent writers of the variety-of-suffrages school. *Class* in Mackintosh's texts often designated any stable community of interest, of

⁴⁹⁸ Vincent Starzinger, *The Politics of the Center, France and England, 1815-1848* (London: Transaction, 1991), 61.

⁴⁹⁹ On Mackintosh's influence more widely, see Patrick O'Leary, *Sir James Mackintosh: The Whig Cicero* (Aberdeen: Aberdeen University Press, 1989).

⁵⁰⁰ The Whig statesman and intellectual George Cornewall Lewis perceived the change that had occurred. In his recapitulation of the previous century of English reformism he noted that the enemy targeted by reform efforts had shifted across eras: in the eighteenth-century reform was anti-monarchical, whereas in the nineteenth-century reform was *both* anti-aristocratic *and* anti-democratic; Lewis, "History and Prospects of Parliamentary Reform," *Edinburgh Review*, vol. 109, no. 221 (Jan. 1859), 266, 284.

which economic groups were not the only ones.⁵⁰¹ Second, in taking the accurate reflection of varied interests to be the foundation of parliamentary representation Mackintosh gave this principle priority *over territoriality* as the basis for constructing constituencies. While Mackintosh does not seem to have recognized this privileging of mirroring over territoriality as an important theoretical moment,⁵⁰² this move would prove extremely fruitful in the hands of his mid-century descendants and open whole new possibilities for institutional design – including, most spectacularly, in the original plans for proportional representation, covered in chapter 6(c). For Mackintosh, as for the more creative reformers of subsections 2(b) and (c), what was ancient and principled about the British electoral system was not the territorial construction of constituencies, but the variety-of-suffrages as a mechanism for achieving the goal of the accurate representation of interests.

When the Whigs at last emerged from the political wilderness and formed a government in 1830, however, they promptly ran afoul of Mackintoshian principles. Although it greatly augmented the number of voters, the reform bill which they proposed and finally passed in 1832 diminished Mackintosh's cherished electoral diversity by standardizing the suffrage – and as a result cut the working-classes off from parliament in those boroughs which saw their low or nonexistent property requirements raised as a result of this standardization.⁵⁰³ In reaction, the Tories adopted the variety-of-suffrages position as their own and turned it against the Whigs.⁵⁰⁴ The Tory MP for Oxford Sir

⁵⁰¹ This expansive meaning of class is clear, for example, in the plea he made for Catholic emancipation: "The English Catholics are a large and respectable body of men, who do not possess the elective franchise. The class is unrepresented, and possesses no political security for its common interest..." Note also how the "*principle*" of representation is phrased: "that every great community, with distinct interests, ought to have separate representatives"; Mackintosh, "Parliamentary Reform," 494, 475.

⁵⁰² The subject was merely broached *en passant* as he attempted to justify a plan for allotting additional seats to the interest of "science": "If some representatives were in time to be allowed to learned societies, it would not be a greater novelty than the grant of the privilege to the two universities by James I"; *ibid.*, 490.

⁵⁰³ The Reform Act set the property requirement in all boroughs at the occupation of a house valued at £10 annual rent and in counties to tenants-at-will who paid £50 annual rent.

⁵⁰⁴ On the trans-partisan character of the class- and interest-based schemes of representation at this time, see Joseph Hamburger, "James Mill on Universal Suffrage and the Middle Class," *Journal of Politics*, vol. 24, no. 1 (1962), 174; Lively

Robert Inglis opposed the Whig bill in order to defend “the House of Commons [as it] is now,” which was “the most complete representation of the interests of the people, which was ever assembled in any age or country.”⁵⁰⁵ He continued, in a manner that would have fit perfectly into Mackintosh’s tracts, “it is the very absence of symmetry in our elective franchises which admits of the introduction of classes so various,” because these localized discrepancies allowed there to be “something to please every body, and to catch every body.”⁵⁰⁶ Similarly, the great Tory statesman and future Prime Minister Sir Robert Peel, in a posture which presages the “Tory democracy” that would guide the Second Reform Act, set himself against reform on the grounds that it would “limit the franchise to particular districts and particular classes...sever[ing] all connexion between the lower classes of the community and the direct representation in this House.”⁵⁰⁷ In contrast to the present system which enjoyed “the immense advantage” that there was “no class of people, however humble, which is not entitled to a voice in the election of representatives,” after reform the lower ranks of society would lack any “champion within your walls.”⁵⁰⁸

Probably the most vociferous of the Tory adopters of the variety-of-suffrages outlook was Archibald Alison, whose peculiar attempt to ensure the ascendancy of true conservative principles in the press during an age in which censorship and persecution were no longer admissible was analyzed in chapter one. In an 1831 essay Alison emphasized the treachery of “Sir James Mackintosh,” who

and Rees, “Introduction” to *Utilitarian Logic and Politics*, 37, 50.

⁵⁰⁵ Inglis, *Parliamentary Reform. Substance of the Speech Delivered in the House of Commons, on Saturday, the 17th December, 1831* (London: J. Hatchard & Son, 1832), 29-30.

⁵⁰⁶ *Ibid.*, 30.

⁵⁰⁷ He continued, “Why confine the privilege of voting to those who rent a House rated at £10-a-year?”; Peel, Speech of 3 March 1831, reprinted in *The Emergence of British Parliamentary Democracy in the Nineteenth Century*, ed. J. B. Conacher (New York: John Wiley and Sons, 1971), 30.

In 1867 Disraeli would explicitly reach back to such speeches as Peel’s to show that the Tories had historically been the party of the workingman; Saunders, *Democracy and the Vote in British Politics, 1848-1867* (Farnham, Surrey: Ashgate Publishing, 2011). 273-4.

⁵⁰⁸ *Ibid.*, 30-1.

inexplicably supported “the present Bill” despite his previous convincing proof that uniformization of the suffrage was inconsistent with the goal of giving to all segments of society “a direct and immediate access to the legislature, without being indebted for it to the tolerance or indulgence of the other classes.”⁵⁰⁹ While he had a constricted notion of the proper place of the lower classes in politics,⁵¹⁰ and was more concerned with what he perceived as the harm the bill would do to the representation of the “commercial, colonial, or shipping interests” than with any harm to the lower classes, even Alison’s version of the official Tory stance was consistent enough to admit that “the Radicals, like every other interest in the state, should be fairly represented in Parliament.”⁵¹¹ For the likes of Peel, Inglis, and Alison, as much as for the “Old Whig” of a preceding generation, the extent to which the Commons constituted an “express image” of the nation was a crucial metric upon which the electoral system was to be evaluated; a basic question to be resolved before the future of the suffrage could be decided was whether in fact the composition of the Commons coincided with the diverse society over which it stood.

2) *Institutions and Sociologies*

Despite the attention that it received during the decades spanning the end of the eighteenth

⁵⁰⁹ Alison, “The Reform Bill,” in *Essays Political, Historical, and Miscellaneous*, 3 vols. (Edinburgh: Blackwood and Sons, 1850), vol. 1, 35, 16. The article was originally published in *Blackwood’s Magazine* in 1831. See also the anonymous anti-reform *Observations on the British Constitution*: “with reference to the representation of all the separate orders of the community, the constitution of the House of Commons is peculiarly felicitous. By virtue of the different rules of franchise that prevail in different electoral corporations, – some of which admit of an almost universal suffrage, while others are strictly oligarchical,—there is no class of persons in England who do not find an echo within the walls of Parliament. From the potwalloper of Preston, to the titled proprietor of Aldborough or Gatton, through all the intermediate ranks, this proposition holds equally true...One advantage is thus gained, which no uniform law of franchise could possibly secure; for at whatever point, short of universal suffrage, we fix the standard of qualification, some of the lower classes must be overlooked; while, on the other hand, if the standard be very far reduced, the franchise of the higher orders will be virtually compromised. Happily, the variety of the electoral qualifications prevalent in England allows us to steer a middle course, – it saves us from the dictation of demagogues, and the dangerous course of innovation which they are uniformly found to pursue ; it saves us also from an exclusively aristocratical Parliament, destitute of sympathy with popular feeling”; *Observations* (Edinburgh: Andrew Shortreed, 1831), 39.

⁵¹⁰ Alison, “The Athenian Democracy, in *Essays*, vol. 2, 303.

⁵¹¹ Alison, “The Reform Bill,” 24-5. For a correspondingly global list of the relevant interests, see *Observations on the British Constitution*, 40-1, 112.

and first third of the nineteenth century, it was not until after Lord John Russell's reopening of the question of parliamentary reform in 1848 that the theory of the variegated suffrage reached its zenith.⁵¹² In the 1850s-60s the extension of these originally Whig preoccupations regarding a system of franchises adequate to the representation of the polyphonic entity that was British society went even further than in the pre-Reform period; they became truly common property across the partisan spectrum.⁵¹³ In this period of ascendance for the theory, an astonishing array of institutional schemes were promulgated which promised to bring the Commons into alignment with the condition of society and public opinion outside its walls.

This section and the following chapter depict this theory – and the projects of institutional design to which it gave rise – in its heyday. The account is not exhaustive; a rendering of the full panoply of pamphlets, essays, and books that treated reform in this vein would fill a monograph on its own. My aim is more modest: to present a representative sampling of (in this section) the major institutional currents into which the theory flowed and (in the following chapter) the values which these authors wished their schemes to realize.

Attempts to perfect the “representation of the country” by apportioning the suffrage such that, as one Whiggish-liberal stated it, “every class, every interest, every opinion was represented in

⁵¹² This effervescence in variety-of-suffrages schemes is in keeping with the character of these decades as (in Robert Saunders's words) a time of “unique constitutional experiment”; see Saunders, *Democracy and the Vote*, Saunders's excellent book is the only modern monograph to have examined the endeavor to render parliament “more popular without democratizing” it, and it has been an invaluable resource for me. In addition to Saunders, see two older articles from Francis Herrick: “The Reform Bill of 1867 and the British Party System,” *Pacific Historical Review*, vol. 3 (1934): 216-33 and “The Second Reform Movement in Britain, 1850-1865,” *Journal of the History of Ideas*, vol. 9 (1948): 174-92.

⁵¹³ This transmission across party lines was facilitated by the weakness of party discipline in the period. On the porous and shifting ideological and party scene in the Commons in this period, see e.g. Angus Hawkins, “‘Parliamentary Government’ and Victorian Political Parties, c. 1830-1880,” *The English Historical Review*, vol. 104, no. 412 (1989), 669; Robert Blake, *Disraeli* (London, Eyre & Spottiswoode, 1966), 270-1; Norman Gash, *Politics in the Age of Peel*, 240. As Norman St. John-Stevas has colorfully described it, the decades between the Reform Acts experienced “a multiplicity of parties, and English politics resembled the politics of the French Assembly more closely than they have done before or since”; see St. John-Stevas, “The Political Genius of Walter Bagehot,” introduction to *CW*, vol. 5, 75.

exact proportion to its weight and worth” followed a few different paths.⁵¹⁴ For our purposes, it is helpful to divide the variety of positions on the proper form for mirroring or descriptive institutions into four categories, even if the exact boundaries between some of these categories cannot be fixed definitively.

The first of these modes of envisioning a properly variegated suffrage and descriptively accurate Commons can be dealt with most quickly, for it required no new exercises in institutional design. This was the camp of supporters of the First Reform Act who defended the Act on the grounds that, although reform had reduced the amount of *formal* variety in the regulation of the suffrage, it had accomplished the *substantive* end of the variety-of-suffragists by increasing the degree to which the composition of the Commons conformed to the condition of society and public opinion outside it. Among other lines of defense,⁵¹⁵ espousal of the alignment of the House with the nation beyond it was a popular one among the Whig politicians who made the Act; as the future prime minister and leading architect of the Reform Act Lord John Russell stated, 1832 had transformed the Commons into a “mirror of the sentiments of the people.”⁵¹⁶

Such defenders of the descriptive character of reformed politics tended to rely on two arguments to buttress their claims. The first was that the reduction of electoral diversity was dictated by a kind of social flattening. On this view, the middle class which benefited above all from the new electoral regulations was, *empirically*, so far the predominant force in English life that it warranted a

⁵¹⁴ Bernard Cracroft, “The Reform Session of 1866,” in *Essays, Political and Miscellaneous*, 2 vols (London: Trübner and Co., 1868), vol. 1, 48.

⁵¹⁵ Other prominent apologies for Reform included that it had brought into power the most intelligent leadership possible, that it had reduced corruption, and that it had produced governments which had ended abuses and pursued correct policies.

⁵¹⁶ Russell, *Letter to the Electors of Stroud: On the Principles of the Reform Act*, third edition (London: Ridgway, 1839), 9. GC Lewis expressed this thought in typical fashion. “Our representative system has not been a sham,” he wrote. It succeeded in “represent[ing] the feelings and opinions of the people”; “that the existing House of Commons has reflected with fidelity the predominant opinions of the great body of the community, and particularly of the educated and intelligent classes, we hold to be a matter of fact, established by the evidence of general notoriety”; Lewis, “History and Prospects,” 279.

great shift of political power in its favor at the expense of those classes above and below them; to reorient parliamentary life around the middle class was not to impose a normative conception of the relative importance of classes, but merely to take account of the fact that English prosperity and public opinion had less robustly pluralistic roots than at an earlier time.⁵¹⁷ The second claim was that a sufficient amount of electoral diversity persisted even after the standardization of the suffrage in the form of variety in the size and location of electoral districts.⁵¹⁸ In these Whigs' judgment, the difference between a metropolitan borough with thousands of urban voters caught up in the full swing of the industrial economy and a small borough with a few hundred electors engaged in a more local and traditional economic-social life was vast enough to secure a salutary diversity in the membership of the Commons.⁵¹⁹ Hence, depending on the demands of a given debate, it was available to the stalwarts of 1832 either to embrace diminished electoral variety as the appropriate response to the predominant standing of the middle class, or to deny that any loss in the translation of the relevant aspects of social diversity into the representative structure had been suffered at all.

A more telling instance of approval of the descriptive integrity of the reformed Commons

⁵¹⁷ In this conception of the status of the middle class's preeminence amongst economic groups we can see (a stylized but still important) contrast between English Whigs like Macaulay and French doctrinaires like Guizot: the former were more empirical and the latter more normative in their defenses of middle-class hegemony.

While he does not put the contrast in terms of empirical versus normative conceptions, Vincent Starzinger's analysis of the differences between Whig and doctrinaire views of middle-class precedence has a similar shape to my thought here; see Starzinger, *The Politics of the Center*, ch. 3.

⁵¹⁸ Even after he embraced a further measure of reform in the 1860s, Russell would still maintain that the Reformed Commons had great merit as a diversity-enabling device: "the character of our present House of Commons...is a character of extreme diversity in representation. Elections by great bodies, agricultural, commercial, or manufacturing, in our counties and great cities, are balanced by the right of election in boroughs of small or moderate population, which are thus admitted to fill up the defects and complete the fulness of our representation"; Russell, *History of the English Constitution*, 237.

⁵¹⁹ Take for example the verdict of GC Lewis that the mirroring of social pluralism was being sufficiently accomplished by the non-uniform system of territorial representation: "the principle of the representation of *classes*...is, to a considerable extent, involved in the principle of locality. Different classes and different interests predominate in different places; and by multiplying electoral districts, and varying their size and character, we give a representation to different portions of the community – to the weak as well as to the strong"; Lewis, "History and Prospects," 289. See also his "Marshall on the Representation of Minorities," *Edinburgh Review*, vol. 100, no. 203 (July 1854), 228-32; and John Charles Spencer, Lord Althorp, *Hansard*, Third Series, HC Deb 9 Aug 1831, vol. 5, 1060. The question of the adequacy of territorial districts to capture social diversity returns in chapter six.

In keeping with this view of the contributions to parliamentary pluralism of a variety of constituency types, mirror theorists tended to be highly skeptical of the proposal for equal electoral districts.

comes from the political commentary of William Rathbone Greg. His confidence in this dimension of the political system is more interesting from a theoretical and intellectual-historical point-of-view than that of someone like Russell, for Greg was both unmotivated by partisan maneuvering and a radical, innovative thinker in his own right – his appreciation of the status quo was dictated neither by the needs of party nor by intellectual timidity or conventionalism.⁵²⁰

Greg wrote voluminously but unsystematically on parliamentary reform; it would be an act of interpretive overreach to attribute to him anything like a *theory* of representation, since his writing on the subject really had only one fixed point – the rejection of democracy as unrepresentative and class-based, a verdict which we will scrutinize more closely in chapter 5(a).⁵²¹ Indeed, his opinion even on the point in question was not steady: he did not consistently enunciate satisfaction with the representativeness of the reformed Commons. At times he spoke of the need for further improvement to render the assembly “as fair and complete an organ as practicable of the various interests and elements which compose the nation” and to achieve a more “fair and beneficent proportion” for “*all* classes.”⁵²² Yet while the “inadequate admission...of the labouring classes” was a “blot” on the “actual Parliamentary suffrage,” Greg’s considered view seems to have been that it was not an especially serious one with respect to the *descriptive* properties of the Commons.⁵²³ It was

⁵²⁰ Greg was an extremely interesting figure: his life was subject to great swings in his personal financial fortunes; he was one of the most controversial Victorian writers on religion due to his skeptical theology and his importation of German methods of Higher Biblical criticism; he went through an epoch of intense enthusiasm for “animal magnetism”; and he was famous in his lifetime for maintaining the closest correspondence of all Englishmen with Tocqueville. See e.g., John Morley, “W.R. Greg: A Sketch,” in *Critical Miscellanies*, 3 vols. (London: Macmillan and Co., 1886), vol. 3, 213-60; Brown, *The Metaphysical Society*, 130-1; Ruth Edwards, *The Pursuit of Reason: The Economist, 1843-1993* (London: Hamish Hamilton, 1993), ch. 13. For an analysis of Greg on representation similar in some ways to mine, see Saunders, *Democracy and the Vote*, 91-4.

⁵²¹ The opposite of “fair representation – a faithful reflex of all these varieties” was democracy, “the system of election by numbers” which would “virtually throw the whole representation into the hands of one class only”; Greg, “The Expected Reform Bill,” *Edinburgh Review* vol. 95, no. 193 (Jan. 1852), 250.

⁵²² Greg, “Representative Reform,” *Edinburgh Review*, vol. 96, no. 196 (Oct. 1852), 471; “Representative Reform,” *Edinburgh Review*, vol. 106, no. 215 (July 1857), 269. These two articles with the same title will henceforth be distinguished by “Representative Reform [1]” and “Representative Reform [2].”

⁵²³ Greg, “Parliamentary Purification,” *Edinburgh Review*, vol. 98, no. 200 (Oct. 1853), 567.

“beyond dispute” that “the actual electoral law...does enable the country to express its opinion clearly and forcibly”; the Reform Act had brought “fully and fairly...to bear upon Parliament the feelings and opinions – the prejudices and passions – the well- or ill-understood interests of the country.”⁵²⁴ “Theoretically imperfect as our actual franchise is,” he summed up, “Parliament yet does, in fact, respond, with very great sympathy and promptitude, to the ascertained wishes of the country.”⁵²⁵ Despite its warts, no reasonable analyst could deny that British politics benefitted from a legislature that was a “*bona fide* representative,” a “faithful representative” of society properly understood.⁵²⁶

The reformed Commons received such high marks for representativeness from Greg for two reasons. First was that the degree of working-class voicelessness under the current arrangements was exaggerated; the pecuniary qualifications were low enough, Greg estimated, that “many of the more deserving of the lower classes...are on the register.”⁵²⁷ Second, and more important, was the rationale of societal flattening that we noted above. The ascendancy of the middle class was the paramount social phenomenon of the nineteenth century; the “voice of the country” was now indisputably that of “the middle classes.”⁵²⁸ To this great sociological shift the fitting response was a sort of parliamentary compression, and this compression was the guiding principle of the great law of 1832; it managed, as no other institutional means could have done, to “curtail the representative power of both the higher and the lower orders in favor of the middle ranks.”⁵²⁹ Hence in reducing the influence both of the landed aristocracy and of the lower classes – in taking power “out of the

⁵²⁴ Greg, “Representative Reform [2],” 259; “Expected Reform Bill,” 214.

⁵²⁵ Greg, “Expected Reform Bill,” 237. For additional similarly positive judgments, see e.g. “Representative Reform [2], 270-1; “Parliamentary Purification,” 567.

⁵²⁶ Greg, “Expected Reform Bill, 214, 240.

⁵²⁷ Ibid., 240. He qualified this pronouncement with: “though confessedly fewer than is desirable.”

⁵²⁸ Ibid., 240.

⁵²⁹ Greg, “Representative Reform [1], 456-7.

hands of these parties and plac[ing] it in that of the *middle* classes” – the Reform Act had improved parliament *qua* image of society, for this latter class was by a large margin the leading generator of the ideas and prosperity of England.⁵³⁰

Supporters of the status quo were, however, far from possessing a monopoly on the mirror theory. Quite the contrary: the unprecedented energy devoted to arguing for a variety of suffrages as the institutional bedrock of a representative system proceeded from dissatisfaction with the

⁵³⁰ Ibid., 456.

It did not follow from Greg’s sense of the descriptive satisfactoriness of the mid-century Commons that he was completely content with the current system. In particular he spoke of three potential alterations: (a) a set of twenty-six “NATIONAL REPRESENTATIVES” to be elected by a nationwide vote, instead of from a local territorial constituency; (b) the enactment of a 50£ savings qualification for the franchise to broaden the current censitary requirements, which were based solely on the value of real estate; and (c) a form of minority representation known as the cumulative vote. The first and last of these topics will return in chapter six. For present purposes, however, it suffices to remark that none of these proffered amendments implied a condemnation of the *descriptive* dimension of the Reformed parliamentary system; on the contrary, he took the adequacy of this aspect of the Commons so much for granted that he was willing to put forward proposals that ran counter to it in order to promote other political goods. The innovation of national representatives was, in Greg’s mind, not a remedy for any deficiency of representativeness but first and foremost a technique for raising the intellectual caliber in the House. He believed that the prospect of voting in a national constituency rather than in a local one would appeal to educated voters, while the less educated would remain on the rolls in their local district; moreover, the opportunity of standing for the whole nation would attract to a candidature the nation’s brightest luminaries, those who would otherwise bristle at having to kowtow to the narrow demands and private interests that dominated in any given locality. As a result, more of the “ablest” and most “high-minded” men would seek to enter the Commons. Likewise, the addition of a path to enfranchisement through savings in addition to real property – which seems, given that it would increase the working-class vote, to be a descriptively-based proposition – was motivated not by the ambition to enhance reflectiveness of the full range of public opinion but by a quite other principle, namely, a non-descriptive criterion of political capacity. Whereas, as will become clear as this chapter progresses, a thoroughgoing variety-of-suffrages descriptivist dismissed any claims about an individual’s entitlement to the suffrage, the unsystematic Greg tasked the electoral system with both producing a societal mirror and incorporating all of his “fellow countrymen [who] are qualified to exercise” the suffrage, and he thought that possession of property, suitably expanded by his modification to take account of savings, provided a tolerable gauge of capacity. Finally, even his endorsement of the cumulative vote, which was meant to give minorities within a local constituency the chance to secure representation, did not carry with it a denigration of the Reformed Commons *qua* mirror of society. This was because Greg saw the cumulative vote predominantly in prospective terms: rather than a corrective to current ills, it was a way of mitigating the damage to representativeness that the potential democratic uniformization of the franchise would do; in practice the present state of affairs already provided the advantages of the cumulative vote through the “*variety* of our constituencies.”

Greg’s desire for further electoral innovation derived, then, not from dissatisfaction with the Commons’s performance on the metric of descriptiveness, but from its shortcomings with regard to other principles and ends for which he held the representative system responsible. To perceive the status quo as descriptively satisfactory did not necessarily mean accepting it unconditionally. The very fact that Greg had no interest in systematizing his extensive commentary on the Commons thus, paradoxically, makes him one of the richest writers of the period from a theoretical point-of-view. For he is a reminder of the truth that, wherever representative government has existed, the electoral system has been the object of many different practical desiderata and normative criteria that can cohere, or fail to cohere, in an abundance of ways.

On the national representatives, see “Representative Reform [1],” 498-500; on the savings deposit qualification, see “Representative Reform [1],” 479-80, “Expected Reform Bill,” 265-6; on the cumulative vote, see “Parliamentary Purification,” 622-3, *Rocks Ahead, or, The Warnings of Cassandra* (London: Trübner and Co., 1874), 7-8; “The Achievements and the Moral of 1867,” *The North British Review*, vol. 47, no. 93 (Sept. 1867), 222.

exclusivity of the mid-century Commons. This dissatisfaction stemmed from two sources. The first was the impression that, however well suited the Reform Act may have been to the state of Britain in the early 1830s, it had become outdated due to social and intellectual developments that had transpired since its passage. This was a potent charge against defenders of the status quo, since the Whigs who had been the architects of 1832 had been fervent progressivists.⁵³¹ As Henry Warwick Cole (whom we will examine more closely in subsection 2(b)) wrote: “the time is ripe for new arrangements which shall bring our political institutions in closer conformity to the altered state of society.”⁵³² John Eardley Eardley-Wilmot (who will return in subsection 2(a)) took the sentiment even further; for him, the simple truth that the Reform Act had been passed a third of a century earlier sufficed to provoke doubt about its current fitness, for “the Representative System cannot be expected to remain as it stood in 1832.”⁵³³ A progressive nation like Britain continually needed to revise its electoral arrangements in order to maintain the appropriate correspondence between parliament and the society over which it ruled; having neglected this task after 1832, parliament had fallen out of step with Britain.

The second source of discontent regarding the unrepresentativeness of the reformed parliament did not depend on any reading of recent British history or any progressive historical metaphysics. Instead, it directly attacked the provisions of the Reform Act itself; in particular, it fastened onto what is, at least in the eyes of modern liberal-democrats, the Act’s most paradoxical

⁵³¹ “The Whigs did not have a static view of society; they were not bent on keeping things as they were....This generous view of man underlay the Whig spirit of reform”; Ellis A. Wasson, “The Spirit of Reform, 1832 and 1867,” *Albion*, vol. 12 (1980): 164-74, 172. The progressive character of Whiggism was visible in their thinking about toleration, as covered in chapter one.

⁵³² Cole, *The Middle Classes and the Borough Franchise* (London: Longmans, Green, Reader, and Dyer, 1866), 9.

⁵³³ Eardley-Wilmot, *A Safe and Constitutional Plan of Parliamentary Reform* (London: William Ridgway, 1865), 4. And see Saunders, *Democracy and the Vote*, 167-8.

In the manner of Gibbons and Stephen in this chapter’s opening vignette, Bagehot projected the point about historical change determining constitutional shifts further into the past: “On the whole, the English constitution of the last century, in its best time, and before the occurrence of changes which we shall soon describe, gave an excellent expression to the public opinion of England”; “History of the Unreformed Parliament, and Its Lessons” in *CW*, vol. 6, 274.

feature. This was that, as discussed earlier, although the law increased the size of the electorate, it curtailed the local variation in the franchise and thereby had the consequence of making the electorate both *more numerous* and *less inclusive*. Like the Tories mentioned in section one who saw the exclusivity of the bill's property requirements vis-à-vis the working classes as a reason to retain the unreformed electoral structures, mid-Victorian reformers of many stripes, including the great Walter Bagehot who will appear in section 2(a), would come to lament the Whigs' abandonment in 1832 of the view of the suffrage which Mackintosh had directed against Bentham in 1818. In effect, mid-century proponents of a revived variety of suffrages appealed from the later Mackintosh – the one who stood by his Whig brethren as they pushed for the Reform Act – to the earlier Mackintosh – the one who had taken to the *Edinburgh Review* to defend a varied suffrage against illiberal democracy – in the name of a renewed increase of diversity in the franchise and, hence, of the reopening of direct electoral paths for the admission of working-class ideas and interests into parliament.⁵³⁴

Both from the perception of societal change and from a negative appraisal of the exclusivity of the Reform Act itself, then, mid-Victorian reformers sought to put electoral multiformity back in the center of the theory and practice of parliamentary representation. These two lines of argument for an installment of multiformity-enhancing reform mingled intimately in the works of the authors addressed here, though some emphasized one over the other – an emphasis that could have subtle but significant institutional repercussions, as we will see.

Thus in one of those provocative twists of fate that characterize the history of political thought, a way of thinking about representation that had originated for the sake of justifying a condition of the suffrage that had come about in an undesigned and evolutionary manner was embraced, in the 1850s-60s, as a template for the conscious, deliberate improvement of the

⁵³⁴ Bernard Cracroft, who straddled the line between a variety-of-suffragist and a democratic reformer, expressed this frustration at the parliamentary marginalization of the working class in colorful terms: "At the present moment, railways, beer, sugar, insurance offices, are all more effectively represented in the House than labour"; Cracroft, "The Reform Session," 47-8.

parliamentary system. Unlike both their forebears who had lauded an inherited political tradition and their contemporaries who defended the mirroring properties of the reformed system, advocates of the differential franchise during the theory's mid-century peak had to devise their own set of institutions which would satisfy the demanding standard of descriptive accuracy.

This task of design was a difficult one. Because their vision of reform was founded on the value of representativeness, and not on, say, a technocratic or paternalistic conception of good governance, there was necessarily a *sociological* phase as well as a *constructive* phase to their projects.⁵³⁵ Their institutional recommendations required a grounding in a (sometimes implicit but often explicit) sociological account of the relative importance of the nation's different "classes, interests, and opinions," for knowledge of the social state to be matched or reflected had to precede the construction of institutions whose merit would lie in their matching or reflecting capacity. The argumentative burden on designers of variety-of-suffrage schemes was therefore doubly heavy: they needed both to articulate a convincing sociological portrait and to demonstrate that the institutions which they prescribed were appropriate instruments for translating this sociology into the Commons. Given these hurdles, it was natural that mirroring proponents of increased electoral diversification would form a more divided camp than mirroring apologists of the status quo. Against this latter group, the rejuvenated "old-Mackintoshianism" of the 1850s-60s can be understood as splitting into three broad schools, in addition to the defenders of the status quo already named. I will treat these schools in ascending order based on the degree to which their prescriptions departed from the then-existent electoral arrangements.

a) Selective Tailoring

From the perspective of the history of political thought as taught today, the best-known of

⁵³⁵ For the technocratic rejoinder to the variety-of-suffrages program, see chapter 5(c).

the cast of writers considered in this chapter is Walter Bagehot. Complementing the discussion of him in part one, his copious writings on representation bear out the verdict that he was an archetypal Victorian⁵³⁶; just as his thought about toleration and liberty of discussion was characteristic of a range of mainstream convictions, his interventions into the debates about parliamentary reform were typical of the variety-of-suffrages school at its apex.⁵³⁷

As would be expected from an author exemplary of this tradition, Bagehot expressed and interlaced both reasons for dissatisfaction with the status quo delineated above. First, he charged the Reform Act with betraying genuine Whig-liberalism by diminishing the variety in the franchise. Instead of finding a means to increase the power of the middle classes and counter the corrupting influences of oligarchic and royal patronage⁵³⁸ which would have respected the “crazy-quilt pattern” of local suffrage regulations then in existence,⁵³⁹ 1832 had decreased the multiformity of the suffrage, rendering Commons membership less diverse and cutting the lower classes off from parliament altogether. Bagehot explicitly appealed to the Mackintosh of 1818 who had elaborated the principle of the variety of franchises⁵⁴⁰ against the Mackintosh who would later stand by the Whigs in their push for a uniformizing Reform Act. The “varying qualification,” long embraced by the “more philosophic of liberal statesmen” over any “uniform ‘right of suffrage,’” had been sacrificed to the exigency of producing a “simple bill” that would remove the worst “abuses” of the

⁵³⁶ G.M. Young calls him the “greatest of Victorians”; see “The Greatest Victorian,” in *Victorian Essays* (Oxford: Oxford University Press, 1962), 116-28.

⁵³⁷ For a fuller reconstruction of Bagehot’s thought on representation – one which takes into account, as cannot be done here, his views on America and on the broad sweep of English political history – see Greg Conti and Will Selinger, “Reappraising Walter Bagehot’s Liberalism: Discussion, Public Opinion, and the Meaning of Parliamentary Government,” *History of European Ideas*, vol. 41, no. 2 (Mar 2015): 264-91.

⁵³⁸ Bagehot, “History of the Unreformed Parliament,” 272.

⁵³⁹ Starzinger, *The Politics of the Center*, 64. For Bagehot’s sympathetic description of the suffrage regulations before Reform, see “Lord Althorp and the Reform Act of 1832,” in *CW*, vol. 3, 220-3; “History of the Unreformed Parliament,” 284.

⁵⁴⁰ He called Mackintosh’s essay the “authoritative exposition of liberal doctrine”; Bagehot, “Parliamentary Reform,” in *CW*, vol. 6, 221.

old system and quell the swelling “semi-revolution.”⁵⁴¹ Such was the sad end of a central electoral tenet of liberalism.

Second: while countering the standardization of the franchise was an important undertaking simply as a matter of principle, the urgency of doing so was compounded, on Bagehot’s telling, by recent social changes. The sad irony of the Reform Act was that it had disenfranchised the urban working classes precisely at the moment at which their claims to a parliamentary voice were growing strongest. According to Bagehot, for most of English history the working classes had lacked the intelligence or interest to attend to national affairs, and therefore they had not contributed to the formation of that public opinion which it was the duty of the electoral “machinery” to convey accurately into the Commons.⁵⁴² Along with many other liberals, Bagehot hailed that this un- or pre-political condition persisted among the rural laboring population.⁵⁴³ Yet, he judged, there had since 1832 arisen a segment of the working classes who *did* contribute importantly to the development of public opinion through its distinctive “sentiments on public affairs.”⁵⁴⁴ This was the advanced, intellectual component of the working classes, the “town artisans” and “the lower classes...in the

⁵⁴¹ Ibid., 220-1.

⁵⁴² Ibid., 221.

⁵⁴³ “There are no ideas among our ignorant poor”; “there are not in the enormous majority of country towns any working men who have much opinion about politics”; Bagehot, *English Constitution*, in *CW*, vol. 5, 403. Similar judgments of the “ruralocracy” were frequently heard across the Channel during these decades, where Liberals decried the peasantry for maintaining Napoleon III’s imperial regime out of excessive concern to protect their property and out of incomprehension and indifference toward genuine political sentiments; see e.g. Roger Price, *Napoleon III and the Second Empire* (London: Routledge, 1997). The most Francophilic of all Englishmen, JS Mill, agreed with this verdict: “The millions of voters who, in opposition to nearly every educated person in the country, made Louis Napoleon President, were chiefly peasants who could neither read nor write, and whose knowledge of public men, even by name, was limited to oral tradition”; Mill, “Thoughts on Parliamentary Reform,” in *CW*, vol. 19, 326.

This negative verdict on the English lower class has fallen out of favor in historical scholarship, though one does encounter the occasional modern historian who seconds Bagehot’s analysis; see e.g. F.B. Smith, *The Making of the Second Reform Bill* (Cambridge: Cambridge University Press, 1966), 52. It ought to be noted in this connection that there was no national system of public primary education in England until the Elementary Education Act of 1870.

⁵⁴⁴ Bagehot, “Parliamentary Reform,” 196.

larger towns [who have] opinions to state.”⁵⁴⁵ The social, economic, and (above all) intellectual progress of this group entailed an adjustment in the electoral system that would recognize its greater socio-ideological standing.⁵⁴⁶

Provision of seats for the urban working classes thus had to be made for parliament to fulfill its function as a mirror of society and for parliamentary discussion to possess all the “materials” of sentiment, opinion, and interest needed for it to be truly informed and deliberative. To accomplish this feat Bagehot advocated an updated version of the “old system of representation...based on a variety of franchises.”⁵⁴⁷ His plan of non-uniform representation was simple, especially in comparison to those which we will soon see. First and most importantly, he would introduce universal or near-universal suffrage in a score of major industrial cities,⁵⁴⁸ while maintaining the post-1832 property requirements in all other constituencies. In these democratic urban boroughs the electoral roll would be dominated by working-class voters, who would thereby be empowered to put candidates of their own class (or at least of their own choosing) into the House. Second, he rounded out his reform proposal by suggesting a rural-to-urban transfer of seats that would enhance the influence of industrial centers at the expense of the overrepresented “landed interest” in a way that would better reflect the preponderance of the “growing parts of the country” over the “stationary” parts.⁵⁴⁹ With these amendments, he boasted, the “general accordance of parliamentary with national

⁵⁴⁵ Bagehot, *English Constitution*, 315; “Parliamentary Reform,” *The Works and Life of Walter Bagehot*, Mrs. Russell Barington, vol. 3, 173. The St. John-Stevs edition leaves out the note from which the final quote in the above sentence was taken, dated 18 Feb. 1859, which Bagehot added to the original text.

⁵⁴⁶ For Bagehot on the relationship between “political structure” and “social structure” more generally, see Alastair Buchan, *The Spare Chancellor: The Life of Walter Bagehot* (London: Chatto and Windus, 1959), 188.

⁵⁴⁷ Bagehot, “Lord Althorp and the Reform Act of 1832,” in *CW*, vol. 3, 223.

⁵⁴⁸ It is not precisely clear if there were to be any minor restrictions; see Paul Smith, “Introduction,” to Bagehot, *The English Constitution* (Cambridge: Cambridge University Press, 2001), xxiv.

⁵⁴⁹ Bagehot, “Parliamentary Reform,” 193.

opinion” would be restored.⁵⁵⁰

Insofar as Bagehot sought to reintegrate the working class into the political system and to revive the principle of electoral diversity, then, his mechanism for doing so was to *selectively tailor* the suffrage. Following on a process of sociological discrimination, he calibrated the suffrage to fit the facts ascertained about the state of society and public opinion, lowering it in those places *and only those places* where doing so would achieve the admission of “really organic interests and ideas” which were at present excluded from parliament.⁵⁵¹ Bagehot’s method was to note those elements of the social-intellectual order which were missing from parliament and then to target those geographical areas in which they were predominant for a localized revision of the franchise requirements; in his mid-Victorian moment this meant reducing the suffrage where it could serve to create an inlet for the town artisans, but in future contexts it might involve carrying out this operation in other constituencies to carve out a space for other groups.⁵⁵²

Before passing to other schemes of this selective-lowering sort, two further features of Bagehot’s approach deserve comment, since they bear on themes that will recur throughout this half of the dissertation. First, he calculated that on his plan there would be forty MPs for “the lower classes.”⁵⁵³ Although forty working-class MPs may seem a modest total, Bagehot was convinced of its robustness. His plan, he went out of his way to emphasize, would produce more working-class MPs than could be expected from the combination of plural voting and proportional representation

⁵⁵⁰ Ibid., 191.

⁵⁵¹ Walter Bagehot, “‘True Liberalism’ and Reform’, in *CW*, vol. 6, 360.

⁵⁵² On Bagehot’s openness to the future expansion of the political order as an instance of the larger Victorian paradigm of growth and evolution, see Jones, *Victorian Political Thought*, 70.

While there is the crucial difference that today we do not alter the franchise across districts, we might still call this method *Bagehot-mandering* to highlight the continuity between it and the current American practice of tailoring the boundaries of constituencies to create “majority-minority” districts in pursuit of the goal of fair racial representation.

⁵⁵³ Bagehot, “Parliamentary Reform,” *The Works and Life of Walter Bagehot*, Mrs. Russell Barington, 174.

endorsed by that famous “advanced liberal,” John Stuart Mill.⁵⁵⁴ While Mill would *enfranchise* a larger number of his laboring fellow citizens – the only Millian exclusions were those who could not “read, write, and...perform the common operations of arithmetic” and those who were receiving “parish relief” (that, is municipal government aid for poverty)⁵⁵⁵ – this greater measure of enfranchisement was, Bagehot judged, a red herring. Despite Mill’s protestations to the contrary, the plain truth was that his elitist democracy would not “give so *much* power to the working class” as Bagehot’s openly nondemocratic system would:

By the adoption of [Mill’s] scheme, you would give to the working classes no characteristic expression in the legislature; you would give them an influence in every constituency in appearance considerable, but which would be of no practical avail to them as a class, because on all characteristic points their voice would be neutralized...by the more numerous votes given for that very purpose to the more educated classes.⁵⁵⁶

What mattered from the perspective of “real representation” was not votes, but *seats* – and seats were come by not through a widespread distribution of “votes...scattered through many constituencies” but by assigning to the working class a concentrated and “preponderant influence in at least some constituencies.”⁵⁵⁷

This single-minded focus on seats over votes followed directly from the fact that the locus of concern for the mirror theory was the composition of the Commons; they attended with great concern to the regulation of the suffrage, but only as the *instrument* for bringing about the desired

⁵⁵⁴ Ibid., 174. Mill, of course, did not agree with this assessment.

⁵⁵⁵ Mill, *Considerations*, 470-2

⁵⁵⁶ Bagehot, “‘True Liberalism’ and Reform,” 358; “Parliamentary Reform,” *The Works and Life of Walter Bagehot*, Mrs. Russell Barington, 174. Similarly, Cracroft called it a “fallacy” to make “the polling-booth and not the votes in the House of Commons the test of representation”; “The Reform Session, 67.

⁵⁵⁷ Bagehot, “The Defeat of the Ministry and the Prospects of Reform,” in *CW*, vol. 6, 306; “The Withdrawal of the Reform Bill” in *CW*, vol. 6, 333.

Bagehot levelled the same charge against the set of “Liberal” (meaning here the party and not the philosophy) reform plans that dispatched altogether with the mirroring mechanism of a “diversity of qualifications in different constituencies” and sought simply to locate the suffrage nationally at the point at which the maximum number of working-class voters could be admitted without created a working-class majority on the electoral rolls; “Parliamentary Reform,” 223; “‘True Liberalism’ and Reform,” in *CW*, vol. 6, 358.

composition.⁵⁵⁸ The issue of any given citizen's personal possession or non-possession of the vote was unimportant; what mattered was identifying the allocation of the suffrage that would best serve the end of accurate mirroring. Bagehot, who followed the logic of his theory of representation to its conclusion, could thus blithely assert that "to have a good Parliament, we must disfranchise some good constituents."⁵⁵⁹ Having a good parliament meant, for Bagehot, empowering the urban working class in a way that did justice to its newfound social-intellectual importance, and this required not the "*sham-representation*" of many votes accompanied by few or no MPs, but rather substantial "direct representation in the House of Commons."⁵⁶⁰ To speak of the level of enfranchisement as a political good in abstraction from the makeup of the House was to operate with a mistaken theory of the nature of representation. The only relevant metric of a group's participation in parliamentary government was the number of seats it "command[ed]," not the number of votes it counted.⁵⁶¹

⁵⁵⁸ "The suffrage is not so much a natural claim as a civil function – not an indefeasible right, but a means to an end"; Greg, "The Expected Reform Bill," 262. Contrast this with the deep religious-symbolic significance of the suffrage in French thought at the time, and in American thought at various periods; see Pierre Rosanvallon, *Le sacre du citoyen* (Paris: Gallimard, 1992); Judith Shklar, *American Citizenship: The Quest for Inclusion*, (Cambridge: Harvard University Press, 1995), ch. 1.

⁵⁵⁹ Bagehot, 'Parliamentary Reform', 223. In this passage Bagehot was using the term "disfranchisement" not only to indicate the formal denial of the suffrage to someone, but also more broadly to describe the position of consistently finding oneself on the losing side of elections due to occupying the position of a permanent minority in a constituency (as, he believed, would be the case for "upper-class" voters in the boroughs to which he wished to grant universal suffrage). This usage was far from peculiar to Bagehot, as will be seen throughout this and the following chapters.

Russell gave a nearly identical formulation: "It is not necessary, however, although every class ought to have an influence in elections, that every member of every class should have a vote." The fact of a "butcher at Hackney" having the franchise while a butcher elsewhere lacked it was in itself no demerit in a system of representation; Russell, *History of the English Constitution*, 180.

In section three of the next chapter, we will see how this indifference about the possession of the vote by every individual connected up with a sense of the proper functioning of a *deliberative* system of representation. Although they tend to prefer random sampling and lottocratic measures, contemporary epistemic democrats themselves often demonstrate a parallel kind of insouciance about universal suffrage. This resemblance should lead us to question just how robustly *democratic* epistemic democrats are; compare, for example, David Estlund's openness to the replacement of "universal voting rights" by a form of "democratic regency" with the variety-of-suffragist conception of a deliberatively necessary restriction of the suffrage; Estlund, *Democratic Authority: A Philosophical Framework* (Princeton: Princeton University Press, 2008), 181-2.

⁵⁶⁰ Bagehot, "The Defeat of the Ministry and the Prospects of Reform," 306-7.

⁵⁶¹ *Ibid.*, 307.

The second aspect of Bagehot's approach that will prove resonant later in this dissertation was his recognition of the difficult argumentative burden involved in applying this theory of descriptive representation. Befitting his standing as one of the most self-aware of Victorian writers, Bagehot acknowledged that the sociology which undergirded his reform proposal was, first and foremost, his own, and that it may not have appeared self-evident to his compatriots: "The most difficult thing to establish by argument is an evident fact of observation. There are no statistics of opinion to which we can refer, there is no numerical comparison which will establish the accordance of parliamentary with social opinion"; indeed, this task was even trickier during the frequently recurring "periods" when "public opinion was much divided and strongly excited."⁵⁶² The truth about which "interests and ideas" were the "really organic" ones, and how one of these should be weighed against the others, was not indisputably revealed to all Englishmen; instead Bagehot would have to *convince* the public that his plan was the one that would renew the connection between assembly and society, that forty members was the fitting amount for the working classes and that a more general displacement of seats from rural to urban was what would reflect the present condition of the country. This admission of the difficulty of the sociological inquiry involved in the design of mirroring institutions would have literally struck home for Bagehot, since Greg, who looked more fondly on the middle-class hegemony initiated by the Reform Act, was his brother-in-law. For Bagehot the compatibility of subscription to the goal of descriptive representation with a multiplicity of institutional designs was a lesson learned inside the family. Yet in spite of this difficult lesson, he held to the hope that his proposal would ultimately be recognized as the proper corrective of the "bias" and "defects" that distorted the parliamentary image of the nation.⁵⁶³

Through the reinvigoration of the principle of electoral diversity, representativeness would

⁵⁶² Bagehot, "Parliamentary Reform," 188.

⁵⁶³ Ibid., 191.

be restored to the Commons and the specter of rule by “a single class” which loomed over any standardization of the suffrage, be it oligarchic or democratic, would be fended off.⁵⁶⁴ Bagehot’s conception of the theoretical heritage of his prescriptions was accurate: this was as direct an application of Mackintosh’s vision as was possible in the mid-century, and indeed he had effected a kind of Burkean rhetorical maneuver, appealing from the new to the old Whiggism on the representation question.

Bagehot was hardly alone in seeking to remedy the unrepresentativeness of the Commons through selectively varying the suffrage across geographical constituencies: his scheme was exemplary of the slew of plans that sought by judicious alterations of the suffrage to place “a certain body of, say fifty or a hundred, special representatives of the masses” in parliament.⁵⁶⁵ Given that Bagehot can be treated as a kind of type of these standard plans, it is worthwhile to spend the remainder of this subsection looking at two authors whose projects fitted the selective-tailoring mold in a less clear-cut manner but who nevertheless viewed themselves as operating with the same framework. This will allow us to see how pervasive the variegated suffrage was as a norm of institutional redesign. For even proposals which appeared quite different at the institutional and rhetorical level could be understood as procedures of reform through selective tailoring. To take one instance, from an author about as far as possible from the “elitism” often attributed to Bagehot⁵⁶⁶: “A Reformer” who took up the mantle of a working-class champion presented his reform scheme as a version of the same model. In his eyes the national discussion on reform had been polluted by reactionary elements in British culture which suffered from “the oppressive nightmare of the

⁵⁶⁴ Bagehot, “The Defeat of the Ministry and the Prospects of Reform,” 306-7. Bagehot was as much a critic of oligarchy as he was of democracy, although the former aspect of his position has received far less attention; see Conti and Selinger, “Reappraising Walter Bagehot’s Liberalism,” section 3.

⁵⁶⁵ Dicey, “The Balance of Classes,” in *Essays on Reform*, 79.

⁵⁶⁶ See e.g., C. H. Sisson, “The Case of Walter Bagehot,” in *The Avoidance of Literature*, ed. Michael Schmidt (Manchester: Carcanet New Press, 1978), 349–438.

disastrous effects it is supposed will ensue from the admission of the working man to the franchise.”⁵⁶⁷ This bigoted fearfulness prevented clearheaded evaluation of the institutional options available at this political juncture. Fortunately, the author himself was under no such dire delusions. He judged the poor to be as politically capable and reliable as the classes above them, for they were possessed of a “sound common sense.”⁵⁶⁸ In light of this bullish estimate of working-class political capacity, it is not surprising to find our “Reformer” among those authors who decried the First Reform Act for severing the tie between parliament and the lower classes.⁵⁶⁹

And yet, despite these “populist” or “democratic” leanings, the “Reformer” retained the principle of the variety of suffrages, seeking manhood suffrage in boroughs only while maintaining a requirement of ownership of agricultural land in the counties in order to ensure direct representation for the “rural” interest and character type.⁵⁷⁰ While this appears a much greater measure of working-class empowerment than Bagehot’s, given that the “Reformer” wished to institute an extensive suffrage in all boroughs and not just a cluster of the largest ones, in fact he predicted from his arrangements an outcome similar to Bagehot’s. This was because, where Bagehot anticipated from the town artisans a rapid politicization and a distinctively class-based political style,⁵⁷¹ the

⁵⁶⁷ A Reformer, *A View of Parliamentary Reform* (Wallingford: W. Payne, 1867), 11-2.

⁵⁶⁸ Ibid., 10. He also promoted the political fitness of the working classes by denying that they were liable to act, by simple force of their numbers, to the exclusion of the interests and opinions of other groups: “few bodies of working men wholly pull together, but are as much subject to diversity of opinion as other classes”; ibid. 9-10. The significance of observations of this sort will be addressed in chapter five, section one.

⁵⁶⁹ Ibid., 12.

⁵⁷⁰ The “Reformer” had a very strong impression of the difference between borough and county constituencies and of the element of diversity which this distinction was responsible for maintaining in parliament; ibid., 14-5.

It is important to note that high Whigs such as Russell could share the same mindset of seeking varied representation while disavowing any particular fears about the working class. Russell was “persuaded” that a “House of Commons exclusively representing working men” would not “instal anarchy, destroy property, or uproot the monarchy.” Nevertheless, he objected to a Commons monopolized by the working class on the grounds that “a representation of one class would not give an image of the property, the experience, the knowledge, the wisdom of England”; Russell, *History of the English Constitution*, 237.

⁵⁷¹ The artisans have “strong class feelings, strong class prejudices, strong class hopes...they have an inherent political aptitude”; Bagehot, “The Withdrawal of the Reform Bill,” 332-3.

“Reformer” rejected both these notions.⁵⁷² Consequently, in order to bring the urban working-class voices which he valorized into parliament he judged it necessary to cast a wider electoral net than Bagehot had done. The “Reformer” enfranchised the working class more broadly to compensate for its minimal energy and distinctness as a political corps; in order for the representatives of the urban laborer to participate meaningfully in the Commons alongside those of rural landowners and of the urban propertied classes many more of the former, in a wider range of districts, would need to receive the right to vote. Yet, as distant as his prescriptions were from Bagehot’s, the difference took place purely at the level of application. The “Reformer” shared with the editor of the *Economist* both a principle (the mirroring Commons) and a technique (the sociologically-grounded apportionment of the suffrage). Although he operated from different sociological and political-psychological premises, he was, just as much as Bagehot, tailoring the suffrage across geographical constituencies in such a way that “every class and interest” would be reflected accurately.⁵⁷³

A glance at a third entrant, from yet another region on the ideological map, helps to reinforce the appeal and range of selective, sociologically-based lowering of the suffrage as a framework for reform. The Tory John Eardley Eardley-Wilmot, 2nd Baronet, despite his solid conservative credentials, sought the electoral integration of the working classes as a foundational political goal.⁵⁷⁴ In contrast to what we might call Bagehot’s “cognitivism”⁵⁷⁵ about representation – his concern to delineate the various streams of public opinion, to match the distribution of *beliefs* in the Commons to their distribution outside – Eardley-Wilmot approached the sociological dimension

⁵⁷² A great many workingmen were apathetic about politics and therefore unlikely to “take the trouble to go to the poll,” and even among those who were politically energized there was often found a deferential temperament that was receptive to the voices of “property, social connections, and intellect”; “Reformer, *View*, 16, 21. This latter point will also be taken up in chapter five.

⁵⁷³ *Ibid.*, 20.

⁵⁷⁴ R. J. Smith, “Wilmot, Sir John Eardley Eardley-, second baronet (1810–1892),” rev. Catherine Pease-Watkin, *Oxford Dictionary of National Biography*, Oxford University Press, 2004 [<http://www.oxforddnb.com/view/article/29626>].

⁵⁷⁵ I am of course not using this term in the technical senses in which it is used in psychology or philosophy today.

of his reform effort by delving into a maze of statistics on economic matters such as savings deposits and imports and exports. With these in hand, he proclaimed that a “progress in the wealth and prosperity of the country” remarkable enough to warrant a shift in electoral-representative structures had occurred.⁵⁷⁶ This progress was, according to his investigations, “due mainly” to the “productive classes.”⁵⁷⁷ The problem was, then, how to transfer influence to the working class “without handing over a preponderating portion of the power...to any particular class, the object being that each section of the community should be fairly and adequately, but not exclusively, represented.”⁵⁷⁸ His suggestion was to lower the property qualification in counties but to lower it more greatly in boroughs, and to complement this reduction with the preservation of the “small boroughs” in order that parliament could continue to benefit from the distinctive character of their representatives.⁵⁷⁹ This reform, in which variation in constituency types interacted with variation in the suffrage, was devised to save the Commons from the worst fate of legislatures, that of “being too limited and one-sided.”⁵⁸⁰

Coming from conflicting ideological orientations and advocating different pictures of the institutional future of English parliamentarianism, the “Reformer,” Eardley-Wilmot, and Bagehot were yet united in their general approach to the revival of the representativeness of the Commons. For all three the problem of representative reform was the problem of allotting the suffrage across the panoply of constituencies so as to improve the resolution on the image of society imprinted in the assembly.

⁵⁷⁶ John Eardley Eardley-Wilmot, *A Safe and Constitutional Plan of Parliamentary Reform* (London: William Ridgway, 1865), 2.

⁵⁷⁷ *Ibid.*, 2.

⁵⁷⁸ *Ibid.*, 4.

⁵⁷⁹ *Ibid.*, 13–4, 22. As mentioned earlier, small boroughs were usually small market towns in rural areas. Many reformers (including Bagehot and, as we will see, others in this chapter) wished to abolish them in order to transfer their seats to more populous cities.

⁵⁸⁰ *Ibid.*, 1.

b) Class-Specificity

Henry Davis Pochin was in many ways very similar to Walter Bagehot. In addition to being only two years apart in age, they were both successful in business in addition to being active politically (Pochin in chemical manufacturing and Bagehot in banking); they both stood for parliament as Liberal candidates and failed; and they were both supporters of women's suffrage.⁵⁸¹ But beyond these general biographical affinities, the two shared an outlook on the basics of the reform question. As was true for "the greatest Victorian," in Pochin's mind the convictions both that the reformed parliament had legislated well,⁵⁸² and that the progress of the country nevertheless made a further installment of reform necessary, existed side-by-side. While England was in the midst of a period of competent governance, the indubitable truth that "the people generally have advanced into a higher stage of civilisation than that for which the Constitution of 1832 was judged adequate" made amendment of the representative machinery an urgent matter. In particular, the most progressive part of the nation was the "Wage-class" of the largest, most economically-developed boroughs⁵⁸³ – by which Pochin seems to have meant something close to, if sociologically less specific and more inclusive than, Bagehot's prized category of "town artisans." Again, like Bagehot, he took for granted that the benighted rural laborers, who are left entirely offstage in the *Plan of Parliamentary Reform*, were not candidates for entry into the electorate; only those segments of the working class which had "grown in numbers, intelligence, and productive power" such that "their interests and opinions" would be wronged without "recognised and fitting exponents," were of

⁵⁸¹ On Pochin, see Trevor Boyns, "Pochin, Henry Davis (1824–1895)," *Oxford Dictionary of National Biography*, Oxford University Press, 2004, [<http://www.oxforddnb.com/view/article/47964>].

⁵⁸² "Looking at the history of the House of Commons for the last forty years, and the many important measures framed and passed to promote the well-being of the masses, it cannot fairly be said that our present system of selecting men suited to the work to be done, and the varied interests to be represented, has not on the whole worked well"; Pochin, *A Plan of Parliamentary Reform* (London: Whitfield, Green, and Son, 1866), 4.

⁵⁸³ *Ibid.*, 7.

concern to him.⁵⁸⁴ Finally, the actual number of seats which these two wished to devote to the “clear and distinct utterance for the opinions and sentiments of the Wage-class” was in the same ballpark, though Pochin was rather more generous (fifty-six in his case to Bagehot’s forty).⁵⁸⁵

Even more revealing of their common mindset was the fact that Pochin ascribed to his views precisely the same provenance as Bagehot had done: his *Plan of Parliamentary Reform* was meant to restore the luster to, and to supply the institutional embodiment of, “the old principle of variety [which] was preferred and cherished...by so eminent a Whig, and so profound a political philosopher as Sir James Mackintosh.”⁵⁸⁶ Like the editor of the *Economist*, he enlisted in the ranks of the “eminent authorities” who now recognized that the uniformization introduced in 1832 “was an error and a disastrous departure from the previous course of the constitution.”⁵⁸⁷ Only by a return to original Whig principles could the representativeness of the Commons be perfected and the democratic tyranny exercised by “a single class with so overpowering a number” be averted.⁵⁸⁸ Pochin’s conception of the purpose and impact of an updated program of differentiated suffrage, then, could have been inserted seamlessly into Bagehot’s voluminous output on the subject.

Yet despite this wide area of overlap, there was an important difference between Pochin and Bagehot – a difference by which Pochin’s proposal diverged formally from the status quo in a more radical way. This was that Pochin intended to reserve the fifty-six seats for major urban constituencies *exclusively* for “the present unrepresented portion of the inhabitants... those who

⁵⁸⁴ Ibid., 9.

⁵⁸⁵ Ibid., 17, 11.

⁵⁸⁶ Ibid., 20-1.

⁵⁸⁷ Ibid., 20.

⁵⁸⁸ Ibid., 6. Here Pochin departed from his friend John Bright, the famous radical Liberal MP: “John Bright’s scheme” was one of those which would “launch us upon the steep incline from which the prospectively indefinite view [of universal suffrage] hinted at already, glooms in the distance”; *ibid.*, 6-7. In stark contrast to Bagehot, Pochin and his wife tended toward radicalism politically; Boyns, “Pochin.”

reside in houses below the value of £10.”⁵⁸⁹ Bagehot, and all subscribers to the “selective tailoring” model of the variegated suffrage, sought to reduce the property requirement in certain populous and industrially advanced cities in order that the advanced working classes in these districts would make up a majority of the electorate. From their perspective, what it meant to remedy the deficit of working-class representation was to create *working-class-majority* constituencies, constituencies in which the working class, when united, could be sure to put a member of its choosing into parliament. For Pochin, on the other hand, the project of granting a “reasonable share of elective power” to the “Wage-class,” “a fair share of political power in the National Council” that would fulfill the promise of a government that mirrored society and public opinion, involved implementing *working-class-specific* constituencies.⁵⁹⁰ Pochin did not advocate lowering the value of property stipulated for the suffrage in these boroughs; rather, this provision was to be left constant, and the constituencies solely of £10 or greater householders would carry on in these cities unaffected. His desired response was instead to establish independent constituencies for the poorer electors alongside the currently existing censitary districts. As he explained:

I propose...that a new [electoral] register shall be formed early [i.e. soon] in each of these selected large towns; that this register shall be as democratic as may be found workable, not stopping perhaps even at household suffrage. To give an example: – In Manchester, under this scheme, the possessors of the present £10. franchise would continue to retain two members; and the possessors of the new democratic franchise I propose, would by themselves alone return other two members; so that the middle-class and working-class elements of Manchester, would each be represented by two members chosen by each class, under the operation of its own special register. This plan would result in...*fifty-six* members to be elected entirely by the Wage-class.⁵⁹¹

On the Bagehot model, the working classes would gain their own MPs in virtue of winning elections. On the Pochin plan, the working classes would have their own MPs in virtue of possessing their own electorates.

⁵⁸⁹ Ibid., 10.

⁵⁹⁰ Ibid., 7, 10.

⁵⁹¹ Ibid., 10-1.

This divergence from the selecting-tailoring configuration had important implications. For one, it promised different practical effects. In contrast to the contending paradigm, for example, it did not provoke fears that it introduced working-class voices into parliament only at the cost of sacrificing the voices of another, particularly important segment of the British population. This was the charge that Mill had levelled against Bagehot's renovation of the variety of suffrages. Bagehot's plan was, in Mill's words, unacceptably "violent" because it would "giv[e] up the representation of the large towns to day-labourers, by establishing, in them, equal and universal suffrage, thereby disfranchising the higher and middle classes of those places, who comprise the majority of the most intellectual persons in the kingdom."⁵⁹² The best minds of England were, in the eyes of Mill and of many others, disproportionately concentrated among the educated and professional strata of precisely those major urban constituencies in which Bagehot would institute manhood suffrage. Yet the establishment of manhood suffrage in these boroughs entailed the threat that they would be consistently outvoted by the working classes and consequently cease to have representation in the Commons. In the kind of unexpected turn that reminds one just how complicated an enterprise it can be to disentangle the various strands of nineteenth-century liberalism, the "democrat" Mill decried Bagehot, whom modern scholars often castigate for elitism, for advancing a vision of the future of parliament in which the country's true intellectual elite would be silenced.⁵⁹³ In Mill's alarmed estimate, parliamentary reform *à la Bagehot* amounted to a simple substitution of the urban lower classes for the urban educated classes, a shift which would reduce the intellectual standard of British politics and diminish the descriptive representativeness of the Commons (since the urban elites contributed more to the formation of public opinion than any other segment of society).

⁵⁹² Mill, "Recent Writers on Reform," 364.

⁵⁹³ On Mill's democratic reputation see e.g. Graeme Duncan, "John Stuart Mill and Democracy," in *John Stuart Mill's Social and Political Thought, Critical Assessments*, vol. 3, 69. For a quite subtle analysis of the "paradoxes" involved in Mill's standing as the "greatest thinker of English democracy" from the generation after Mill's death, see John MacCunn, *Six Radical Thinkers*, ch. 2.

No such objections could be brought against Pochin's class-specific scheme for enfranchising the urban proletariat; Pochin was explicit that much of the value of his project lay in the clear demarcation between socioeconomic groups which allowed him to include the working classes while preserving urban upper-class representation in its integrity. Naturally, since he believed that it was not "desirable to increase the present number of seats in the House of Commons," the extension of seats to the working classes had to come at the expense of some other set of seats; in Pochin's case, these were seats belonging to small boroughs.⁵⁹⁴ But because he did not accept the commonplace, dear to a host of "centrist" Whigs and liberals, that the small borough voters had a distinctive and valuable sensibility that warranted a place in the representative system, he did not equate the diminution of these constituencies with any descriptive loss. For these reasons Pochin could be confident of the superiority of the practical operation of his scheme; it would endow urban wage-earners with a "material and substantial" parliamentary presence without betraying the genius of English representation, which was that it was "spread and divided among *many* classes" with no group of significance excluded.⁵⁹⁵

Pochin was not a political philosopher, so it was on these practical advantages, predictably, that he dwelt. But there were also important conceptual differences between his scheme and the other models. Relative to the reformed system and to selective-lowering proposals, Pochin's plan had a distinct conception both of the unit of representation and of the relationship between the representation of a class and the ideological makeup of that class. Given the theoretical import of these differences, it is worth saying a word about each of them.

First, regarding the unit of representation: while in its actual operation Pochin's endeavor to produce a sociologically accurate Commons was to be limited by the constraint on the number of

⁵⁹⁴ Pochin, *Plan*, 11.

⁵⁹⁵ *Ibid.*, 17, 6.

MPs (at, in his view, the trivial cost of a reduction of small boroughs), in principle his class-specific approach could have turned the Commons into an almost infinitely fine-grained portrait of British society and public opinion. This greater flexibility, this greater potential for descriptive fine-tuning, came from its rejection of the assumption, operative in Bagehot, that the form of a constituency was a geographical region to which a single rule of suffrage applied. On this picture the variety of suffrages was a variety *between* districts, not *within* them. Geographically bounded communities remained for Bagehot and company the primitive unit of representation.

Pochin's class-specific reform, however, dispensed with this singular focus on geography. Within the same territorial unit could exist separate constituencies; constituencies operating over the same space could be made independent by virtue of an alternate criterion: class. Socioeconomic standing was no less capable than residency of defining membership in a constituency. As noted in section one, this expansion beyond residency as the criterion for membership in a given electorate was not an innovation; he was, rather, taking up the radical baton dropped by Mackintosh decades earlier. And by the time of Pochin's pamphlet several other experiments in the construction of non-territorial electoral demarcation (of which some will be considered later), had appeared; moreover university constituencies accounted for six seats in the Commons before the Second Reform Act (which expanded the number to nine).⁵⁹⁶ But though his inclusion of non-residential factors in the erection of districts was not novel, the theoretical importance of this difference within the pantheon of variety-of-suffrages arguments nevertheless comes out clearly when we observe that on Pochin's approach, though not on Bagehot's,⁵⁹⁷ it becomes conceivable that every citizen could be sorted into an appropriate group-based constituency invested with the proper voting power according to

⁵⁹⁶ University constituencies, it should be noted, would proliferate further in 1918 before being abolished in 1950. Six university seats remain today in the Irish upper house.

⁵⁹⁷ Even the most fortunate distribution of population and the most craftily made efforts at gerrymandering cannot eliminate the friction that prevents a geographically-based system from being a perfect mirror; Andrew Reeve and Alan Ware, *Electoral Systems: A Comparative and Theoretical Introduction* (London: Routledge, 1992), 47, 87.

sociological observations about this group's weight and significance. On Pochin's reasoning there was no barrier *in principle* to organizing constituencies according to ever more finely-drawn socioeconomic categories (such as professions or union membership instead of merely classes) or other factors (such as religion) should these be judged to have greater political salience.

This insight that the realization of a mirror theory of representation might require constituencies to be understood in ways other than (as Gladstone would say in another context) as simply geographical “integers”⁵⁹⁸ brings the class-specific version of the variegated suffrage close to two other sorts of electoral machinery for achieving the desideratum of sociologically-accurate parliamentary diversity: the more radically pluralistic and diversified schemes discussed in the next subsection, and proportional representation, which is the subject of chapter six. Indeed, we might go so far as to say that the gap between Pochin and the writers in the following subsection, large as it is at the level of institutional prescriptions, was empirical rather than conceptual: the gap consisted solely in the fact that the latter thought that more intricate delineations of special constituencies were demanded to give a full reflection of their country's diversity than the former did. However timidly applied in his own hands, Pochin was operating in a conceptual universe in which the quest to accurately translate England's “varied classes” into parliament might involve quite other implements than the traditional territorial district.⁵⁹⁹ And he may himself have contemplated such further refinements as a consequence of his plan – while he hoped his scheme could settle the matter for the moment, could close the present “pressing and urgent” episode in the history of reform, he welcomed any “safe and timely” adjustments that the continued development of the country might later necessitate.⁶⁰⁰

⁵⁹⁸ Gladstone, Speech of June 15, 1870, *Hansard's Parliamentary Debates*, Third Series, vol. 4 (London: Cornelius Buck, 1870), 147.

⁵⁹⁹ Pochin, *Plan*, 6.

⁶⁰⁰ *Ibid.*, 17.

The second noteworthy theoretical upshot of the move from class-majority districts to class-specific ones concerned the relationship between the goal of representing a class (or any demographic group, for that matter; recall the wide sense of class with which these writers are working) and the conception of the ideological makeup of the class. The extent to which socioeconomic classes were ideologically uniform or multiform was, as will be covered in chapter five, a hotly debated question in the mid-Victorian period. The ability of a selective-tailoring design to remedy the deficit of working-class spokesmen in the Commons was predicated on the answer to this question lying in the direction of uniformity. With majority rather than exclusively working-class districts, the goal of gaining entry into parliament for working-class voices could be accomplished only if working-class opinion was relatively homogeneous, for if the working class was fractured in its beliefs then the victorious candidate could very well stand for something quite other than working-class ideas in any clear sense. Under a Pochinian arrangement, on the contrary, no assumption of ideological homogeneity was needed in order for the working class to place its champions in the House. Class-specific constituencies, in other words, held out the prospect of enabling a diverse and conflicted working class, and not just a united one, to have its own parliamentary agents. This method of variegated suffrage, unlike the one analyzed prior to it, would allow not only the working-class point-of-view, but working class *points-of-view* in the plural, to make their parliamentary mark.

Pochin was not the lone reformer during the climactic period of the variety-of-suffrages theory to place class-specific electorates at the center of his plan. The celebrated Whig historian Edward Creasy concluded his popular primer on constitutional history *The Text-Book of the Constitution* with a call to implement an arrangement very similar to the one that Pochin would end up adopting.⁶⁰¹ Like Pochin he wanted to “pare away fifty members” “out of the smaller and most

⁶⁰¹ Creasy’s endorsement of working-class-exclusive electorates testifies particularly well to the degree to which this had

notoriously corrupt boroughs, and the smaller counties” in order to free up these seats for “working men.”⁶⁰² In contrast to Pochin, Creasy did not assign these new “democratic” districts to the most advanced urban boroughs, but he advised for the creation of these new seats that Great Britain be divided into fifty equal electoral districts in which all male residents not currently enfranchised who met certain minimal criteria would be eligible to vote.⁶⁰³ Creasy was thus conceptually a very close antecedent to Pochin, though empirically and sociologically they differed: Creasy, in opposition to Pochin and the wider liberal consensus, did not privilege the urban worker over the rural laborer.

In the year that Pochin published his *Plan* another close relative of his scheme appeared. In keeping with a point which I have pressed throughout, this contribution to the reform debate came from the opposite party milieu; where Pochin was a Liberal friendly to the radical wing of his party, in his own reform tract Henry Warwick Cole did not hide that he was writing as a Conservative partisan.⁶⁰⁴ Cole took for granted the standard liberal sociology which privileged the urban working classes over their rural counterparts, and therefore devised a “special application” of the electoral law for the “largest towns only.”⁶⁰⁵ What Cole sought to do was to replace, in these urban boroughs, the current arrangement by which all electors voted in common for the (almost always) two

become a mainstream position, for Creasy embodied “parliamentarianism at its most typical”; H. C. G. Matthew, “Creasy, Sir Edward Shepherd (1812–1878),” *Oxford Dictionary of National Biography*, Oxford University Press, 2004; online edn, May 2006 [<http://www.oxforddnb.com/view/article/6660>]. Revealingly, Creasy cited Mackintosh on the long constitutional pedigree of a “variety of classes” exercising the borough franchise; Creasy, *The Text-Book of the Constitution* (London: Richard Bentley, 1848), 51.

⁶⁰² Creasy, *Text-Book of the Constitution*, 62.

⁶⁰³ “Give a vote in the election of the district member to every male aged twenty-one years, who has no vote for any county or borough, who has resided for a year in the district, who has not been convicted of any criminal offence for the last seven years, or received parish relief for the last year, and who is able to read and write”; *ibid.*, 62. Interestingly he also explicitly wished that the ballot be used in these democratic elections.

⁶⁰⁴ Cole, *The Middle Classes and the Borough Franchise* (London: Longmans, Green, Reader, and Dyer, 1866), 68–71. His partisan affiliation was not overly important to him, though; he agreed with the prevalent view that partisanship had been experiencing a period of weakness: “There has, in former times and during several centuries, been a series of struggles between the Whigs and the Tories, about which men still differ in sentiment, if not in opinion; but both those parties have really ceased to exist since 1832, though they may have left traditions behind”; *ibid.*, 76.

⁶⁰⁵ *Ibid.*, 2.

members to be returned with a new system in which “separate electoral bod[ies]” would be assigned to wealthy (he called them “middle-class,” though by this term he really did not mean to extend below the top economic decile) and working-class voters.⁶⁰⁶ He explained his scheme as follows:

to take Westminster for an example, we should have one member for the first division of the borough returned by the Middle-Class electors as their representative, and a member for the second division returned by the Working Class electors as their representative.⁶⁰⁷

By a half-and-half division of seats Cole would therefore transform an “aggregate of about 68 cities and boroughs returning 138 members to Parliament” into “69 members” directly elected by the working class and the same number by the middle classes; his class-specific constituencies outnumbered the more modest provisions of Pochin (56), Creasy (50), and Bagehot (40).⁶⁰⁸ Cole followed these others in considering this increase to be substantial. Like Bagehot, he boasted that his proposal was more inclusive than those of famous figures on the “left”: just as Bagehot went out of his way to stress that his electoral machinery would generate more working-class representatives than Mill’s, Cole bragged that his plan was more inclusive and working-class-friendly than that of the great Whig reformer Lord Russell. Unlike the forays of Whig oligarchs, his plan alone would place the different classes on a proper “footing of equality.”⁶⁰⁹ In the manner of the anonymous “Reformer” of the previous subsection, Cole avowed no fear of the lower orders⁶¹⁰; his was a scheme, he stated flatly, that would honor and satisfy all classes.

For all the similarities between this trio, Cole’s contribution split from those of Creasy and

⁶⁰⁶ Ibid., 31.

⁶⁰⁷ Ibid., 28. Cole’s choice of Westminster here was a symbolically rich one, since Westminster had historically been a bastion of democratic sentiment.

⁶⁰⁸ Ibid., 55.

⁶⁰⁹ Ibid., 55, 57.

⁶¹⁰ Ibid., 12.

Pochin in one respect: he wished to preserve the small boroughs.⁶¹¹ This disagreement did not ruffle Cole's confidence that *his* was the plan that would at last turn parliament into the mirror of society it was supposed to be and square the circle of admitting "large masses of the Working Classes" without "swamping" the rest of society.⁶¹² Cole's institutions were the ones by which parliamentarians would finally come to "reflect and represent the opinions of their fellow countrymen."⁶¹³

Before leaving this subsection, a final point ought to be made about the relationship between the designers of class-specific districts and the selective lowerers analyzed earlier. I have called the former more "radical" than the latter, and indeed they were in the obvious sense mentioned above: their preferred electoral arrangements departed more widely from the arrangements in place at the time than the selective lowerers' did. And yet it would be wrong to equate the greater radicalism of their institutional designs with a greater radicalism of social sympathies. As we have already begun to glimpse, and as will continue to see throughout this half of the dissertation, Victorian political thought is distinctly resistant to being broken down along a unitary left-right spectrum, and this is especially true on the subject of representation. Just as adherence to the variety-of-suffrages framework came in the mid-century to cut across and complicate partisan affiliation, so particular variations on the variety-of-suffrages theme did not correspond neatly to any rank-ordering of the general ideological predilections of the authors. Given that it seemed an open question to Victorians whether the reforms advocated by Bagehot, whose rhetoric was staunchly hostile to democracy,

⁶¹¹ Ibid., 64.

⁶¹² Ibid., 1; see also 21, 67.

One of the most curious details of Cole's essay is the explanation he gives of the ubiquitous use of the term "swamping" to signal the classist character of universal suffrage: "The use of this expressive word, as applied to the franchise, has received the sanction of a great thinker of the age, Ralph Waldo Emerson. As a citizen of the United States, he has had personal experience of the lamentable fact that the Middle Classes in that country abstain, in despair, from taking any part in politics, because they feel themselves 'hopelessly swamped'"; *ibid.*, 1. Apparently in Cole's mind the Transcendentalism of New England was a cousin of the variegated-suffrage school of old England.

⁶¹³ Ibid., 21. Cole was here turning a quote from John Bright against Bright himself.

were not in fact more empowering of the working class than those of the much more democratic-sounding Mill, it should not surprise us to observe an even greater measure of confusion reigning within the various variety-of-suffrages camps.

This point about the indistinctness with which the institutional content of a given scheme mapped onto wider social sensitivities is well illustrated by a feature of Cole's essay on which we have not yet touched.⁶¹⁴ This was that, despite his unfrightened stance toward working-class political attitudes, his endorsement of the "radical" proposition of class-specific constituencies, and his comparatively high allotment of sixty-nine seats for the urban working class, he saw himself as the champion of the (very affluently defined in his sociology) "Middle Classes." To Cole, the reformed parliament, rightly understood, was anything but the middle-class triumph which its Whig patrons advertised it as being: "the necessity of recognising the more important members of [the Middle Classes] as a definite political body or class, and of assigning to them a distinct political existence, continues to be disregarded by our leading Statesmen."⁶¹⁵ It was in order to remedy this state of neglect toward the country's leading class that Cole set about to develop a "scientific" assessment for a "new distribution of political power" that would avoid either maintaining the unsatisfactory status quo or bringing about "the political extinction of the Middle Classes" which he predicted, in Tocquevillian-Bagehotian fashion, would ultimately follow any further uniform reduction in the property qualification.⁶¹⁶ His purpose was not, he stressed, to forge any "such predominance of the Middle Classes over any other as to render class legislation possible"; rather he sought the "just" end

⁶¹⁴ Fittingly, this lesson about the indeterminacy of the connection between institutional plans and broader political values holds for the other schools of representation discussed in this dissertation as well.

⁶¹⁵ Ibid., 7. To drive home this message about Whig shortcomings with respect to the political position of the middle class, Cole chose a quote from Macaulay on "that brave, honest, and sound-hearted class" as his epigraph; *ibid.*, title page.

⁶¹⁶ Ibid., 19, 22, 72-3. He quoted *Democracy in America* at length to the effect that "when a nation begins to meddle with the electoral qualification, it may easily be foreseen that, sooner or later, it will happen that that qualification will be *entirely abolished*."

of ensuring to the “intelligent Middle Classes”, through the strategy of cordoning off a “first division” for them in the major cities, a substantial band of MPs who “would represent their opinions, protect their interests, and give to them a direct and practical influence in the legislation of the country.”⁶¹⁷ Although it guaranteed a solid swathe of working-class MPs – outstripping both the projections of many contemporary competing schemes and the proportion of representatives that this class occupies in many democracies today – the true target of this parliamentary affirmative action was not the lower orders but their betters, who rightly demanded a security that they “would not be swamped.”⁶¹⁸ For Cole, class-specific electorate construction was a technique not so much of empowerment for the working class as of insulation for the middle class. It was a technique for protecting those above from those below, a technique that had the advantage not only of being efficacious but also of being “open and direct” in its “methods.”⁶¹⁹ Class-exclusivity was an instrument for delivering the good of meaningful middle-class representation in as fair, effective, and transparent a manner as possible.⁶²⁰

Cole’s self-understanding as a promoter of justified middle-class desires for a more independent parliamentary presence is even more revealing of the indeterminacy about the left-right valence of specific schemes when compared with two figures from the previous subsection: Greg and Eardley-Wilmot. Cole shared with Greg a strong conviction of the sociological centrality and, hence, rightful political leadership of the middle class. Yet this shared conviction produced disparate institutional preferences, since Greg believed that the Reform of 1832 had by and large succeeded in

⁶¹⁷ Ibid., 67, 56.

⁶¹⁸ Ibid., 55.

⁶¹⁹ Ibid., 28. Cole’s foil for the openness and directness of his program was the “complicated puzzling method propounded by Mr. Hare,” that is, proportional representation.

⁶²⁰ Cole’s vision of class-specific constituencies as a prophylactic for upper-class influence is provocative in light of the recent zeal for class-based institutions in “populist” political theory. Victorian conservatism and John McCormick’s version of Machiavelli are surprisingly united in the wish to institutionalize class difference and guarantee separate “popular” representation; McCormick, *Machiavellian Democracy* (Cambridge: Cambridge University Press, 2011).

establishing the deserved parliamentary hegemony of the middle classes, while Cole thought that 1832 had fallen short of “procur[ing] from British statesmen a fitting recognition of their real political importance.”⁶²¹ Though each conceived of himself as an advocate of the same social group, Greg’s contentment with the current structure led him to put forth little more than minor tweaks to the status quo in his reform writings, whereas Cole’s discontent caused him to accept fundamental alterations to the traditional British electoral system.

In comparing Cole and Greg, then, we find institutional misalignment where we would have expected, from their seemingly common allegiance to the middle-class cause, to find alignment. However, in comparing Cole with another Tory, Eardley-Wilmot, we find a different sort of mismatch. Eardley-Wilmot, as we noted above, took his project to be a vindication of working-class claims, a vindication meant to reflect the greater weight which working class interests and opinions now objectively bore after decades of progress. This self-conception was, moreover, not inaccurate: he argued for policies that were genuinely expansive of the electorate both in the boroughs and the counties. Cole, on the other hand, was staunch in characterizing his intervention as a middle-class one. And yet, from a serious point-of-view, of the two proposals it was Cole’s that was the more supportive of the working class. You will recall that Bagehot thought the proper standard for measuring the degree to which a scheme improved the standing of the working classes was the number of *seats* rather than the number of *voters* it created – on its own the vote was a “useless” mirage “unless you give them some members [of the Commons] also”⁶²² – and it is in a similar sense that the vote rings hollow if it does not result in representatives with whom one identifies that underlies much contemporary public discourse on the unrepresentativeness of the American

⁶²¹ Cole, *Middle Classes*, 11.

⁶²² Bagehot, “Present Aspects of Parliamentary Reform,” in *CW*, vol. 6, 257.

Congress and other national legislatures.⁶²³ Thus although Cole envisioned the move to class-specific districting more as a technique of insulation than as one of empowerment vis-à-vis the working class, by Bagehot's rubric his proposal may very well have been more parliamentarily empowering of the lower orders than Eardley-Wilmot's less concentrated, more "uniform Enfranchisement" program.⁶²⁴ (It is hard to say for sure since Eardley-Wilmot, unlike so many of our authors, provided no estimate of the number of seats his program would put "absolutely at their disposal."⁶²⁵ Yet it is likely that he would have registered below Cole's figure, since he stated that on his scheme even in the boroughs, which were not intended as the counties were to "represent[] the element of property," "property" would not lose "its just and legitimate influence."⁶²⁶) Perhaps only in the sociological and institutional welter that formed the backdrop to mid-Victorian political thought could a writer like Cole, who could barely stop lamenting for a second the political maltreatment of the "men who give the City its real importance,"⁶²⁷ wind up a solider friend of the working class than those whose rhetoric more vigorously trumpeted working-class claims.

In short, what makes this period so provocative and rich from the perspective of the theory of representation is also what makes it so confusing and difficult to interpret: namely, that radicalism in institutional design was not necessarily the outcome of radicalism in social sympathies or ideological allegiance, nor was rhetorical boldness or authorial self-conception an accurate sign of the balance of power which an author actually wished to strike between the different segments of society. The schemes of variegated suffrage varied as much among themselves as did the array of

⁶²³ See e.g. Nadja Popovich and Feilding Cage, "Are you reflected in the new congress?" *The Guardian USA*, 6 Nov. 2014. <<http://www.theguardian.com/us-news/ng-interactive/2014/nov/06/-sp-congress-diversity-women-race-lgbt-are-you-represented>>.

⁶²⁴ Eardley-Wilmot, *Constitutional Plan*, 32.

⁶²⁵ Bagehot, "'True Liberalism' and Reform," 358.

⁶²⁶ Eardley-Wilmot, *Constitutional Plan*, 12, 8.

⁶²⁷ Cole, *Middle Classes*, 39.

suffrages within any one of them.

c) *Radical Revisionism*

The selective lowering of a Bagehot and the targeted class-specificity of a Cole did not exhaust the imaginativeness and boldness of reform recommendations. A final camp incorporated into their proposals sites of representation other than the territorially-based constituencies which remained the building-blocks of the schemes examined so far. In other facets as well members of this camp struck out further than those authors who treated an assortment of boroughs and counties much resembling the then-existing structure as elemental. These thinkers were as committed to the principle of the variegated suffrage as any of the foregoing figures, and often as invested in showing the compatibility of their schemes with the venerable lineage in English politics of the non-uniform franchise. And yet they applied this principle in radical and revisionist ways.

This subsection discusses four such radical revisionists. The combination of fidelity to the variety of suffrages with openness to profoundly remodeling the electoral-parliamentary framework was – unsurprisingly, as we have now seen – not limited to any one corner of the ideological universe. As a result, the quartet examined here includes two establishment spokesmen, one Whig and one Tory; a working-class radical; and a highly eccentric liberal.

To begin with the latter: in 1857 George Harris, a failed lawyer, devoted collector and cataloger of old manuscripts, and writer on all manner of subjects, published an essay with the grand title *The True Theory of Representation in a State*.⁶²⁸ Though Harris was a close friend and protégé of the

⁶²⁸ Harris, *The True Theory of Representation in a State* (London: Longmans, Brown, Green, and Roberts, 1857). The subtitle encapsulates much of importance about the descriptive theory and the pluralistic sociological outlook that undergirded it: *or, The Leading Interests of the Nation, Not the Mere Predominance of Numbers, Proved to Be Its Basis*. On Harris personally, see E. I. Carlyle, “Harris, George (1809–1890),” rev. Catherine Pease-Watkin, *Oxford Dictionary of National Biography* [<http://www.oxforddnb.com/view/article/12389>].

Saunders classes Harris with Tory writers in the one mention he gives him, but it is unlikely that Harris was affiliated with the Tories and certain (as we will see) that his aim was not to “shore up the Tory interest or increase the representation of the land”; Saunders, *Democracy and the Vote*, 61. It is much more likely that Harris identified as a Whig,

statesman Henry Brougham, whose quintessentially Whig insights about the role of a free press in bolstering political stability we examined in part one, the *True Theory* was anything but a text typical of the Whig milieu. In truth, Harris's essay reads as a slightly crazed document, at least when judged against the unadorned and straightforward character of most Victorian political writing. It is full of scholastic jargon and elaborate corporeal metaphors for the polity reminiscent of an earlier age, and its prose is strikingly impenetrable for a text envisioned not only as a philosophical treatise on the "first principles of political government, and of parliamentary representation," but also as a practical contribution to the ongoing debates about parliamentary reform.⁶²⁹

Harris's tract was atypical not just stylistically, but substantively as well. In stark contrast to the general philosophical tenor of the period, sketched in chapter two, Harris operated in an explicitly combinatory framework, attempting to marry claims of "natural right" – of "an undoubted and inalienable right" to vote – with the utilitarian and historicist modes of thought dominant in these decades.⁶³⁰ Harris was one of the rare authors outside of the Idealist tradition of the end of the century to see any merit in the proposition that "the enfranchisement of the people was an end in itself,"⁶³¹ though insofar as he placed some value in premises other than the utility-, interest-, and diversity-based ones which characterized the school of mirroring representation he was quite close

given his close relationship with Brougham, his association with the predominantly Whig *British and Foreign Review*, and his decision to write a biography of the Whig Chancellor the First Earl of Hardwicke (*The Life of Lord Chancellor Hardwicke* [London: Edward Moxon, 1847]). While the preface to the *True Theory* does make mention of two Tory reformers (Eardley-Wilmot, whom we have already encountered, and Augustus Stapleton, whom we will encounter in this section), these mentions were not intended to show that Harris was of their party but rather to show that he was *beyond* party. He was displaying bipartisanship in showing that his researches appealed to those of "opposite politics and opinions"; *True Theory*, vi-vii.

⁶²⁹ Ibid., viii. The *True Theory* was hardly Harris's only work to be found lacking in accessibility. In his later *Philosophical Treatise on the Nature and Constitution of Man* (1876) he "reverted to the principles and terminology of the medieval schoolmen, and he completely ignored the methods and conclusions of contemporary scientific psychology"; Carlyle, "Harris, George." The historian W.L. Burn called the *True Theory* a "pseudo-philosophical and far from lucid work"; Burn, "The Fancy Franchises," *Parliamentary Affairs*, vol. 8 (1954): 240-245, 243.

⁶³⁰ Harris, *True Theory*, 58, 20.

⁶³¹ Green, "Parliamentary Reform," Speech of 25 February 1868, in *CW*, vol. 5, 234.

to John Stuart Mill.⁶³² Harris stood outside the mainstream political culture, although in the company of some influential minds, in taking the vote to be a natural entitlement of (male) citizens.

Yet for Harris as for Mill these ideas contained only part of the truth. Where Mill went on to clarify that from an equal right to vote it did not follow that there was a right to an equal numbers of votes, and that therefore plural voting violated no fundamental norms of political equality,⁶³³ Harris accompanied his egalitarian proclamations with the clarification that a natural right to the suffrage did not entail that constituencies be constructed in a sociologically undifferentiated manner.⁶³⁴ The half-truths of “the numerical or democratic theory” were, instead, to be subordinated to the exigencies of making “the representative body in a State” “an epitome or abridgment of whole civil body or community” that could “fairly reflect or shadow forth the form or outline of it.”⁶³⁵ The parliamentary image which a democratic suffrage would produce would be distorted and partial, because the uniformity of its electoral regulations was out-of-sync with the diversity that characterized the “general and leading interests of the state.”⁶³⁶ Consequently the actual endeavor to design representative institutions was to be guided by principles which were distinct from and which superseded the egalitarian implications of a freestanding subscription to natural rights. These principles which were to regulate institutional design came in the form of “four distinct axioms”:

1. That all the essential and real interests of the State ought to be represented in its legislative assembly.
2. That they ought all to be directly represented there.
3. That each ought to be

⁶³² Mill likewise declared, *contra* Bagehot’s untroubled assertion that “to have a good Parliament, we must disfranchise some good constituents,” that it was “a personal injustice to withhold from anyone...the ordinary privilege of having his voice reckoned in the disposal of affairs”; Mill, *Considerations*, 469.

⁶³³ Mill, *Considerations*, ch. 8.

⁶³⁴ Modern democratic theory remains split on this question of whether sociological undifferentiation is demanded by the value of political equality. For a negative answer, see Charles Beitz, *Political Equality: An Essay in Democratic Theory* (Princeton: Princeton University Press, 1989), chs. 6-7; for an affirmative one, see Jonathan Still, “Political Equality and Election Systems,” vol. 91, no. 3 (1981), 375-94. The question of what equality demanded with respect to the suffrage was most thoroughly broached in the Victorian era during the debate about PR, which will come up in chapter six.

⁶³⁵ Harris, *True Theory*, 18, 23-4.

⁶³⁶ *Ibid.*, 9.

represented in due proportion to its relative importance. 4. That they ought so to be represented that, as much as possible, they may all harmonise together.⁶³⁷

Thus, for all of his rhetorical and philosophical heterodoxy, at the end of the day the core Whig tenets of descriptive representation won out in Harris's vision of parliament. It is a testament to the gravitational pull of the theory in this era that even a part-scholastic, part-natural-rights theorist – just about as strange a species of political animal as existed in the Victorian ecosystem – would nevertheless give a quite orthodox list of standards for the construction of national assemblies.

The *a priorist* egalitarian strand of Harris's thought was not, as we will see below, mere hollow words. But it was not on the terrain of natural rights that the action of the book took place. For the natural-rights strain dictated simply that as many people be enfranchised as possible. But how was this desired mass enfranchisement to be accomplished in such a way that distortion and partiality were prevented from afflicting the image of society created in the assembly?

Harris's answer was simple: by undoing 1832. In contradistinction to several of the other variety-of-suffragists who pushed for another measure of reform on the grounds both that the uniformizing tendency of the First Reform Act was harmful *and* that recent developments in society had caused its sociological accuracy to deteriorate, Harris was completely uninterested in the latter of these reasons. In another interesting departure from the norms of his period, no narratives of historical progress enter into his thinking. The evils of 1832 did not require a subtle grasp of recent social history to be understood.

On Harris's evaluation, the Reform Act was a disastrous piece of legislation– so bad that it pulled off the difficult feat of possessing seemingly contradictory deficiencies. On the one hand, by diminishing the extent of differentiation in the franchise, it proceeded implicitly on the principle that

⁶³⁷ Ibid., 21.

“numbers” alone were to be “taken into consideration in the establishment of this system.”⁶³⁸ And yet, because the government that passed Reform lacked the courage of its democratic convictions, the Act imposed censitary requirements that left vital components of British life out of the system altogether: “freemen, and those who were distinguished by the uneuphonious title of ‘pot-wallopers,’ and as ‘scot-and-lot’ voters, were all engulfed together in the merciless abyss of this tremendous measure.”⁶³⁹ The entire “popular element” of the state had been swept aside.⁶⁴⁰ Hence the result of 1832 was a wholly “defective representation.”⁶⁴¹ In the aftermath of this great legislative folly, the task facing the architect of parliamentary reconstruction was to restore the principle of electoral variety to its former preeminence and to target it such that it would “correspond with... the different interests of the State.”⁶⁴² A more complete and accurate mirror of society through more finely targeted electoral diversity: this was the lesson of the *True Theory*.

For all of his eccentricities, when Harris set out to provide this mirror he followed the method of institutional construction implicit in the variety-of-suffrages theory with a notable

⁶³⁸ Ibid., 43. The Whig makers of the Act would obviously (and correctly) have disputed the identification of a reduction in the variety in the franchise with the endorsement of universal suffrage. After all, given certain sociological views compression of the representative system could stem just as easily from the mirror theory as diversification.

⁶³⁹ Ibid., 18.

⁶⁴⁰ Ibid., 19. This is not say that Harris thought property qualifications were simply oligarchic; he allowed that there was some sense to the older idea that a minimal property requirement could *enhance* popular representation. The argument for the populist interpretation of censitary thresholds went as follows: (a) a property threshold was a sign of independence; (b) dependent citizens were corruptible; (c) corruption rendered the assembly unrepresentative of public opinion. Hence it was possible to defend property restrictions “not from any jealousy of the people partaking too largely in the representation, but in order to prevent the legitimate influence of the people being unduly swayed by those who are possessed of wealth and power,” although Harris himself dissented from this view; *ibid.*, 20. For this defense of property restrictions in the American context, see Alex Keyssar, *The Right to Vote: The Contested History of Democracy in the United States* (New York: Basic Books, 2000), 10, 22, 322.

⁶⁴¹ Ibid., 42. For Harris there was another reason, supplementing this sociological inaccuracy, to reject the censitary baseline for the suffrage. This was that it sent an overly materialist message about the nation’s values; it promoted “the money-loving spirit of the age”; *ibid.*, 18. Frederick Denison Maurice, a Christian socialist who will be discussed in chapter five, lodged an identical critique against the reformed parliament’s property requirements for “mak[ing] money the standard of worth, the characteristic glory of the citizen”; Maurice, *The Workman and the Franchise* (London: Alexander Strahan, 1866), ix. See also Holyoake’s linkage of the Reform Act’s property requirements with “that worship of materialism and property which is attaining a deplorable prevalence in England, so destructive of the finer qualities of man”; Holyoake, *The Workman and the Suffrage* (London: Holyoake & Co., 1859), 8.

⁶⁴² Harris, *True Theory*, 59.

scrupulosity and clearness. As noted earlier, if the accurate reflection of interests was the basis of a representative assembly's legitimacy, it followed that an account of what those interests were had to precede any attempt at institutional design, lest the electoral regulations enacted produce a composition of representatives that was, judged against the facts about the societal distribution of interests, arbitrary and ill-sorted. Harris obliged, carrying out a preliminary exercise in sociology before setting forth his own proposal. Interestingly, and contrasting with the bulk of his differentiated-suffrage comrades (although not, as was noted, with Bagehot), Harris candidly confessed the challenging character of the sociological enterprise: the "definition and adjustment of these different...interests," the inquiry "into the nature and relative importance of the different great interests of the State," was hardly self-evident: it was "a task of considerable difficulty, and may admit of very wide discussion."⁶⁴³ His prose may have been opaque, but he was committed to practicing the mirror theory conscientiously and according to the proper order of operations, as well as to acknowledging its difficulties.

Harris's admission that answers to the sociological question were disputable may well have been in response to startled pushback at his own notion of the makeup of the nation. For Harris offered a distinctive, not to say bizarre, reading of the constitutive elements of British society. Indeed, in keeping with his unusual anti-contextualism and indifference toward recent social-historical changes, it was not entirely clear that his sociology was even a sociology *of Britain*, as opposed to some kind of deduction from a vision of the *a priori* necessary characteristics that inhered in the concept of a society; as he explained in the midst of the sociological portion of the book, he was striving to illuminate how "*every political body* is...as extensively and as essentially influenced by different interests, as it is constituted of different individuals."⁶⁴⁴ From this murky

⁶⁴³ Ibid., 24-5, 22.

⁶⁴⁴ Ibid., 24, my italics.

deductive process Harris emerged with a six-fold classification of the interests for which representation had to be secured: “I. Virtue. II. Intelligence. III. Order. IV. Property. V. Professional. VI. Popular.”⁶⁴⁵ (It is worth noting *en passant* the resemblance between Harris’s hypostasis of norms and attributes into real social entities such as to extend the realm of what it was possible to represent and the expansive view of representation which Pierre Rosanvallon supports and theorizes today.⁶⁴⁶) It is only possible here to sketch the content of the categories as presented in the *True Theory*, which contains in-depth explorations of each one, but it is nonetheless important to give some impression of what Harris conceived as falling under these headings. By *virtue*, Harris meant those institutions and stations of life that were particularly associated with “religion and morality” and the “principle of rectitude,” chief among which were the clergy, which Harris came close to envisioning as an estate of the realm in the manner of *ancien régime* France; this “interest” was to a marginal degree already satisfied by “the presence of the bishops in the House of Lords,” but since the upper house had ceased to play an important role in legislation it was imperative to find a point of entry for them into the Commons.⁶⁴⁷ By *intelligence*, Harris hoped for the expansion of the tenet of the university constituency into a “distinct and independent separate representation” of “learned bodies” and groups of highly educated citizens.⁶⁴⁸ The third category, *order*, was the least readily comprehensible of all; in the abstract he wanted to comprehend all those social avenues through which the values of “law,” “justice,” and “allegiance” were realized, though in the concrete he seems mostly to have been concerned to maintain the large number of “lawyers” in the House.⁶⁴⁹ The final triumvirate of *property*, *professional*, and *popular* referred to more familiar demographic groups

⁶⁴⁵ Ibid., 25.

⁶⁴⁶ See especially Rosanvallon, *La légitimité démocratique: Impartialité, réflexivité, proximité* (Paris: Seuil, 2008).

⁶⁴⁷ Harris, *True Theory*, 25, 27.

⁶⁴⁸ Ibid., 28-9.

⁶⁴⁹ Ibid., 30-1.

– with the latter, which he also titled “the people generally, more especially...the poor,” constituting, he stressed, as “essential [a] branch of the community” as any other.⁶⁵⁰ Such was the unique and confusing medley of pieces which made up (British?) society on Harris’s reckoning, and which it was the obligation of the designer of a representative system to convey accurately into the assembly.

Before outlining the institutions which he believed were dictated by this analysis, it is worthwhile to make a final observation about the sociological side of his theory. This is that, counter to most of his variety-of-suffrages cohort, Harris was careful to distinguish between the mirroring that was required to create a satisfactory assembly and a complete mirror that would reflect every aspect of social reality. The parliamentary mirror was for Harris a necessarily selective one. For one thing, a distinction had to be drawn between the “real and true interests [which] should be represented” and those “influences,” such as “anarchy and corruption,” which, however great their effect on society, were to be kept out on the grounds of their harmfulness.⁶⁵¹ He illustrated the point about the selectivity of the genre of descriptive representation to which he adhered with the example of “the thieves and pickpockets of London” who, despite being “a very numerous, a most intelligent, and a particularly industrious body of men,” had never been made the subject of a “formal complaint...to Parliament that they are not adequately represented there” – even though, he continued cheekily, “if they were so represented, great ameliorations in our criminal code might through their aid be effected.”⁶⁵²

The discriminations requisite for the composition of the representative body were not

⁶⁵⁰ Ibid., 35-6. He employed, as was his wont, a corporeal metaphor for clarification: “the people are to a State what the body and the vital functions are to a man, the care of which...it is absolutely essential should obtain a due share of attention”; *ibid.*, 36.

⁶⁵¹ Ibid., 37. Jane Mansbridge similarly accepts the need for normative selectivity in descriptive representation today: “The process of choosing representatives should select to some degree against those views that are useless or harmful to the polity as a whole”; Mansbridge, “Should Blacks Represent Blacks and Women Represent Women? A Contingent ‘Yes,’” *Journal of Politics*, vol. 61, no. 3 (1999), 634.

⁶⁵² Harris, *True Theory*, 14.

limited simply to guarding against the inclusion of obviously pernicious social factors. Within the class of “true and real” interests a division had to be made between those the nature of which was to participate in the representative system and those which “require no representatives” in “the legislature”; he gave, as instances of the latter group, the “judicial, and naval, and military interests of the nation.”⁶⁵³ He did not, however, set forth criteria for separating these two groups of real interests – one might call them the *representation-necessitating* and *representation-excluding* interests – assuming, it seems, that the matter would be obvious to readers.

It should be clear that Harris did not think these selections would be particularly controversial; he was decidedly not granting that there was a space of indeterminacy or that reasonable disagreement about the distribution of interests to be included in parliament. He thought he was merely making the commonsensical (though often unaddressed or elided) point that representative government did not entail the reproduction *simpliciter* of society; representativeness did not mean indiscriminateness or comprehensiveness in imaging society. But in facing up to the truth that the sociological work entailed by the theory of the differentiated franchise inevitably involved a layer of judgment, a screening process about what and what not to include, which was not reducible to simply reading off the collection of elements that *in toto* constituted the nation, Harris came much closer than his fellow variety-of-suffragists to acknowledging that the sociological component of their projects was not a solely neutral or empirical accounting of social facts.⁶⁵⁴

What was the institutional result of this process of sociological deduction, classification, and

⁶⁵³ Ibid., 38.

⁶⁵⁴ We might go so far as to draw a parallel between these remarks of Harris on the theory of descriptive representation and Fitzjames Stephen’s thoughts on the theory of legislation more generally. Where, as we saw in chapter two, Stephen pronounced “neutrality” in lawmaking to be impossible even for the most liberal of governments, Harris claimed that it was simply unavoidable that even the most “genuine, liberal, and comprehensive” design of representative institutions would involve a selectivity about which features of society to include; *ibid.*, 95. Harris was not as perspicuous as Stephen, though, and certainly did not grasp the full implications of what he was saying on the topic.

This theme of the questionable neutrality or self-evidence of the sociologies on which variety-of-suffrages schemes were founded is the subject of chapter five, section two.

discrimination? By a path which is not easy to re-trace, and which is not especially relevant for our purposes, he arrived at a four-fold division of types of seats: (1) “learned, professional, and commercial corporate bodies”; (2) “property voters”; (3) “professional voters”; (4) “personal voters.”⁶⁵⁵ Each of these divisions was to receive 150 members, and each was to be voted for only by those in the relevant identity group. The composition of the second and third kinds of constituencies should be clear. The fourth consisted of all those (literate) men who were not enfranchised under one of the preceding headings; it corresponded to the “popular interest.” The first and least clear category was a collection of bodies – ranging from universities to the Bank of England, from the East India Company to the London Stock Exchange, from mining companies to canal companies – to which anywhere from one to a half-dozen seats were granted and for which “membership, proprietorship, or annual subscription” conferred the vote.⁶⁵⁶

This plan was, quite obviously, a radical modification of the then-current arrangements. It incorporated class-specific constituencies⁶⁵⁷ in a more far-reaching way than the applications of it examined in the previous sub-section. Where the latter envisaged a twofold division in a selection of urban boroughs, Harris advocated a tripartite division (categories 2-4) for “every town and county constituency.”⁶⁵⁸ Further, he promoted a vast expansion of non-territorial membership-based constituencies which, as mentioned above, existed in the reformed system only in the form of seats for Cambridge, Oxford, and Dublin Universities. Harris was striking out far from the normal parliamentary path, redesigning the system, one can say without much exaggeration, from the ground up. And yet the inspiration for this revisionism – the end to which all of these

⁶⁵⁵ Ibid., 63.

⁶⁵⁶ Ibid., 61-2.

⁶⁵⁷ This term is appropriate to Harris only if we keep in mind the broad notion of class operative in Mackintosh; in keeping with the antiquated bent of Harris’s mind, he did not really think in terms of the modern socioeconomic category of class.

⁶⁵⁸ Ibid., 57.

unconventional means were directed – was, as we have seen, perfectly orthodox: “that every class may be independently represented, and that no one class may overwhelm the interests of the others” and “virtually disfranchise” them.⁶⁵⁹

Apart from these glaring alterations, several other features of Harris’s plan deserve mention. First, it reduced the size of the Commons from 658 to 600 members. Second, this reduction, as well as the carving out of seats for corporate bodies, was to be effected entirely at the expense of the small boroughs. As with Pochin in the previous section, Harris did not lament the passing of the small boroughs, for he attributed to them no special sociological value; since they “represent[ed] no particular interest,” they could be jettisoned without any diminution of representativeness.⁶⁶⁰

Third, the plan involved plural voting. Plural voting in the *True Theory* did not take the more familiar form of weighted voting, that is, graduating the number of votes that an elector possessed within a single constituency according to the amount of property owned (as the future Tory Prime Minister Lord Salisbury, then Lord Robert Cecil, was urging⁶⁶¹) or the degree of education attained (as in Mill’s version of plural voting). Instead, plural voting took place on Harris’s scheme insofar as the citizen could exercise *one* vote in *each* constituency for which he qualified for the suffrage.⁶⁶² (This form of plural voting already existed in the Victorian era – owners of property could vote both in their place of residence and the place in which their property lay, and university alumni could vote both for their university seats and in the appropriate territorial constituencies.⁶⁶³)

⁶⁵⁹ Ibid., 63.

⁶⁶⁰ Ibid., 60.

⁶⁶¹ Salisbury, “The House of Commons,” in *Lord Salisbury on Politics, A Selection of His Articles in the Quarterly Review, 1860-1883*, ed. Paul Smith (Cambridge: Cambridge University Press, 1972), 185.

⁶⁶² Ibid., 60.

⁶⁶³ Like the university vote, this latter form of plural voting – the so-called “business vote” in multiple constituencies – persisted in England until 1948; see Reeve and Ware, *Electoral Systems*, 25, 63; Neal Blewett, “The Franchise in the United Kingdom: 1885-1918,” *Past & Present*, no. 32, 44-7. The final remnants of plural voting in local elections were not removed until 1968; Enid Lakeman, *How Democracies Vote*, third edition (London: Faber & Faber, 1970), 59-60.

The most important observation to make about Harris's version of plural voting is that it was not an exception to the sociological representativeness which oriented his theory; it did not originate in some other set of paternalist or elitist values. The rationale for the electoral structures of the *True Theory* was sociological and descriptive *all the way down*. Consequently, when a wealthy Edinburgh doctor who had bought land was permitted to vote for the seats belonging to his university, the college of surgeons in the city, and the professional and property constituencies in his borough, while the Manchester working man was enfranchised only for the popular constituency in which he lived, this discrepancy did not register the former's moral-intellectual superiority or the greater economic "stake" which the former had in the body politic. The Edinburgh doctor's greater number of votes was, rather, meant to reflect the greater multifariousness of his social participation; since he partook of or entered into a broader swathe of the manifold interests that constituted society, a mirroring suffrage could not but enfranchise him many times over. The (so to speak) more variegated person would necessarily (and rightly) be more multiply enfranchised by a system of variegated suffrage.⁶⁶⁴ Plural voting was not chosen as an end or good for its own sake, but was an ineluctable byproduct of the consistent implementation of the electoral mechanisms of mirroring. Such, at least, was Harris's interpretation of what he was doing: every provision of his plan was dedicated to producing an assembly "not only more fair for the various great interests of the State, but...more liberal" and better able "to secure an efficient representation of the mass of the people, than any which has been either devised or demanded."⁶⁶⁵

The purely sociological-descriptive valence of Harris's acceptance of plural voting can be usefully contrasted with Mill's endorsement of weighted voting. For Mill, plural voting was not a downstream result of fidelity to the goal of representativeness; a "graduate suffrage" based on

⁶⁶⁴ One can envision this practice as the political equivalent of the college professor with appointments in multiple faculties of the university and voting rights in each.

⁶⁶⁵ Ibid., 64.

education was, rather, a good in itself, an expression of fundamental values which it would be “in principle wrong” for the representative system to ignore.⁶⁶⁶ Weighted voting was a matter of respecting the truth “that every one is entitled to some influence, but the better and wiser to more than others”; not to graduate the suffrage was to countenance the “false creed” that “any one man...is as good as any other.”⁶⁶⁷ To Mill the normative sphere from which plural voting issued was quite other than that of representativeness and descriptive accuracy; it came from a moral-political elitism that was distinct from the world of values which Harris thought relevant to the design of representative institutions.⁶⁶⁸ For Harris but not for Mill, social realities, and not elitist lessons, were the only subject matter of the representative system.

The eschewal of elitism in his electoral architecture segues smoothly into the fourth and final feature of the theory that merits attention, namely, that of all the interests into which Harris dissected society it was the “poor” or “popular” element which he believed was most benefitted by his scheme. Under the unrepresentative structure put into effect by the Reform Act no group was “suffer[ing] more than the one comprehended in Class VI”; a principal motivation of Harris’s intervention was to bring about a reversal of their fortunes.⁶⁶⁹ From no voice at all in parliament, he wished to lift them to occupancy of a quarter of the seats – an “influence” which was sufficiently “extensive” to reflect their sociological significance, and which would at last give them “fair sway” in the House.⁶⁷⁰ He was so confident in the robustness of the popular component of his plan that he predicted that it would put an end to democratic agitation: “all sincere radicals, all the advocates for

⁶⁶⁶ Mill, *Considerations*, 479, 478.

⁶⁶⁷ *Ibid.*, 478.

⁶⁶⁸ Mill’s rationale for plural voting, while not guided by it, did admit sociological-Whiggish content as a limiting condition. The distribution of the weights of votes “must on no account be carried so far, that those who are privileged by it, or the class (if any) to which they mainly belong, shall outweigh by means of it all the rest of the community”; *ibid.*, 476. And see below, ch. 5, note 1095.

⁶⁶⁹ Harris, *True Theory*, 42.

⁶⁷⁰ *Ibid.*, 38.

universal suffrage and for the general extension of the franchise” would be satisfied to learn that the true principles of “fair representation” called for such an impactful transfer of power to the lower class.⁶⁷¹ (It would, naturally, also satisfy the “Conservative Party” since it would “ensure the fair representation of intelligence, and property, and the higher influences of the State.”⁶⁷² The *True Theory* was, hence, the path to national reconciliation.) Harris thought his program was one of popular liberation – not liberation, of course, for Class VI to become a “despot” or to seize “the only influence, or the predominating influence” in parliament, for no class was entitled to such standing.⁶⁷³ But liberation, nevertheless, in what was to him the only sense that accorded with the values of *representative* government – that is, for the electoral structure to enable groups of citizens to participate independently and with due weight in the forum of national legislation.

Harris perceived a kinship between his proposal and an essay by one Augustus Stapleton. In fact, as we will see in the next chapter, the connection between their ideas was imperfect. Harris, however, appears to have been eager to build bridges, and he welcomed work which, even if indifferent to his notion of proper “first principles,” helped to reinforce “practical” convictions in favor of his kind of scheme.⁶⁷⁴ Although he is the uneasiest fit of all the authors considered in this chapter, it is worth looking briefly at his essay, since it both contained a radical revision of the electoral system and expressed sympathy with the model of inclusive and variegated suffrage.

While we have examined conservative entries into the variety-of-suffrages catalog above, Stapleton’s *Suggestions for a Conservative and Popular Reform* exceeded these writings in the vociferousness with which it announced its allegiance to the Tory party. After having served in his twenties as the private secretary to Tory Prime Minister George Canning (about whom he would

⁶⁷¹ Ibid., 97, 54.

⁶⁷² Ibid., 97.

⁶⁷³ Ibid., 37-8.

⁶⁷⁴ Ibid., viii.

write multiple biographical works), Stapleton became deeply devoted to propagating the Tory cause.⁶⁷⁵ On the subject of reform, his rhetorical and political strategy hung largely on outflanking the Whigs and revealing them as betrayers of their own values of variety and representativeness. With the opposition discredited, political space would open for the Tories to step in with their own sociologically-rich project of reform. The *Suggestions* thus advanced in two stages: 1) an assault on the Whigs; 2) the exposition of a suitable Tory alternative.

Stapleton's attack on the Whigs centered on the 1832 Reform Act, of which he had an even lower opinion than Harris. His critique was sweeping and multidimensional; some of it is not relevant to our discussion, and some of it will be treated in the following chapter. At this juncture what is most important about his critique is that it condemned the Reform Act for the diminution of parliament's representativeness through the elimination of "the direct representation of the poor."⁶⁷⁶ Stapleton presented 1832 as an exercise in Whig hypocrisy: he contrasted the Whig philosophy that the Commons should be a mirror the sentiments of the nation with the outcome of the law, which was to have impaired the representation of the "various classes and different interests which make up this entire nation."⁶⁷⁷ As we saw with Harris, Stapleton traced the uniformization effected by Reform to the tacit acceptance of the "numerical majority" or "the democrattick power" as the sole foundation for parliamentary legitimacy, and he explained the imposition of the censitary requirement as a failure of courage and consistency on the part of the Reformers.⁶⁷⁸ The *practice* of the Reform Act was that only property ought to have a voice in government; its *principle*, on the other hand, was that only the "mere will" of the majority, rather than the full extent of the nation's

⁶⁷⁵ W. P. Courtney, "Stapleton, Augustus Granville (1800/01–1880)," rev. John Wolffe, *Oxford Dictionary of National Biography* [<http://www.oxforddnb.com/view/article/26298>].

⁶⁷⁶ Stapleton, *Suggestions for a Conservative and Popular Reform* (London: Published for Hatchard, and Ridgway, Piccadilly, 1850), 46.

⁶⁷⁷ *Ibid.*, 35-6. He presented the Whig, pro-diversity point-of-view through a series of quotations from Russell.

⁶⁷⁸ *Ibid.*, 37.

diversity, had a claim to be present in the assembly.⁶⁷⁹ And these two adverse notions, which only a law as deeply flawed as the Reform Act could manage to combine, were equally far from the truth about parliament.

After having dispatched the legacy of 1832, Stapleton delivered his own prescriptions for reform. In this constructive phase he was much less rigorous in adhering to the mirroring method of electoral design than was Harris; indeed, *contra* Harris, he did not precede the institutional sketch with a sociology of any sophistication. This was not just a result of sloppiness; the absence of deep sociological inquiry stemmed as well from Stapleton's only partial commitment to the theory of descriptive representation (a theme which will be resumed in the next chapter). But despite this divergence, the general shape of Stapleton's institutions resembled Harris's in several major ways. Two are of particular significance here.

First, under the rather capacious heading of representation for "the learning and education of the country," he assigned fifty-eight seats directly to a series of corporate bodies (many of which would reappear in Harris's longer and more creative list) ranging from the Inns of Court to retired military servicemen to the clergy of both established and dissenting churches.⁶⁸⁰ These seats were to be made available through the consolidation of small boroughs which, in contrast to these bodies, could make no claims to possessing particular knowledge or interests. Stapleton was thereby executing a massive transfer of seats away from territorial constituencies – territory, again, was being downgraded in favor of another method of recognizing relevant and representable groups.

Second, Stapleton also made provision for the reentry of "the poor man" within the pale of the constitution.⁶⁸¹ In order that "the poor should have some persons chosen by themselves to

⁶⁷⁹ Ibid., 37.

⁶⁸⁰ Ibid., 41-6.

⁶⁸¹ Ibid., 47.

explain their sentiments and state their grievances to the legislature,” he suggested that twenty-six seats be regulated on the very inclusive “Scot and Lot” franchise, one seat being allocated to each of twenty-six geographical divisions based on the dioceses of the Anglican Church.⁶⁸² This was a much smaller number than Harris granted his “popular element,” and it was lower than the more modest totals of the plans which sought working-class enfranchisement within major urban boroughs alone. But, despite the smaller sum, Stapleton shared with Harris the aspiration to achieve a truly *national* representation of the poor, as opposed to the projects of sociological discrimination that sought the enfranchisement of the advanced segments of the working class alone.

Though less empowering of them, Stapleton’s plan was thus more *inclusive* of the working classes than the selective-tailoring or urban class-specific schemes surveyed above. Hence we encounter another version of the paradox noted above whereby the First Reform Act widened the electorate while also increasing its exclusiveness: Stapleton’s proposal gave fewer seats to the lower classes than his competitors’, but it enfranchised these classes more completely. From the democratic, or the liberal, perspective of the twenty-first-century reader, which is normatively preferable: Stapleton’s proposal of broad enfranchisement but a smaller working-class presence in the Commons, or Cole’s and Pochin’s narrower and more selective enfranchisement coupled with a larger allotment of working-class seats?

A third radical revisionist, Henry George Grey, the Third Earl Grey, was almost the diametric political opposite of Stapleton. While Stapleton was a Tory spokesman, Grey was a leader of mid-century Whiggery, one of the party’s most prominent politicians and most prolific publicists, as well as the scion of one of its great families. Befitting his paternity – he was the son of the prime minister who had passed the Reform Act – Grey’s reformism was not tinged with sourness toward 1832; unlike Stapleton, whose writing conveys a kind of annoyance at having to participate in a

⁶⁸² Ibid., 47.

project of parliamentary redesign, an annoyance overcome only by the urgency of recovering from the damage wreaked by the Whigs, Grey took up the mantle of reform without misgivings. Re-entering the terrain of electoral-parliamentary design was not, for him, a repudiation of 1832 but a proceeding that carried on its “wisdom.”⁶⁸³

Continuing in the spirit of 1832 did not mean leaving its measures uncriticized. Remarkably, given the identity of his father, Grey voiced the same dissatisfaction with the homogenizing aspects of 1832 so common in this generation:

It was likewise, in my opinion, an error in the Reform Act (but in the circumstances of the time an inevitable one), that it gave the whole Representation of the country to constituencies which were everywhere so much of the same character. The former distinction, with respect to the nature of the Franchise between Counties and Boroughs, was indeed kept up, but the great diversity which had prevailed in the right of voting in different Boroughs was almost entirely done away with; and in spite of some reservation of vested rights, the £10 householders were made everywhere the masters of the town representation. It has been argued, and I think with justice, that though there were obvious and decisive objections to the capricious manner in which the Franchise varied in different Boroughs under the old constitution of the House of Commons, this arrangement, with all its faults, had yet the advantage of giving a better representation to some classes of society than they now enjoy.⁶⁸⁴

Like Greg, Grey saw the Reform Act as fundamentally a work of electoral compression. By its provisions the political influence of both the poor and “the higher class of the town population” had been reduced.⁶⁸⁵ But where Greg celebrated this diminution of the representation of the socioeconomic extremes, judging it to stem from the just recognition of the preeminence of the educated, industrial, commercial middle-classes above the other segments of British society, Grey lamented that this compression had been taken too far. As a result the country was now perilously close to being ruled by one class alone:

⁶⁸³ Grey, *Parliamentary Government, Considered with Reference to Reform*, second edition (London: John Murray, 1864), 97.

⁶⁸⁴ *Ibid.*, 117.

⁶⁸⁵ *Ibid.*, 118. *Pace* Greg, for whom the traditional landed aristocracy was the group at the top that had been most diminished politically, Grey did not express consternation about the reduction of its influence in particular. The object of Grey’s concern in this passage seems more likely to have coincided with what Mill meant by the “most intellectual persons of the kingdom” who lived in these cities.

Under the Reform Act, the £10 householders are everywhere masters of the Borough elections, and thus the middle class to which they belong is invested not with a preponderance (which it is admitted it ought to have), but with a monopoly of political power, to the injury of the working class on the one side, and of the highest class of the town population on the other.⁶⁸⁶

The light of decades of subsequent experience had exposed that, accompanying its great successes (such as counteracting corruption), the Reform Act had damaged the Commons *qua* mirror of society. The second act of the reform movement would therefore need to incorporate variegation into the electoral structure in order to repair its machinery for descriptiveness and inclusiveness.

The difficulty was that, in Grey's eyes, there was no possibility of reviving the variety of suffrages in anything resembling its old form. The arbitrary, haphazard character of the unreformed assortment of suffrages had been acceptable when it was revered as an organic growth, a heritage passed down by centuries of success in constitutional government. But to *impose*, through parliamentary legislation, distinctions without differences – to pass new laws granting the vote, as Bagehot and others were advocating, to the “artisan in Manchester” while withholding it from the identical “artisan in Macclesfield” – would not be tolerated in mid-century Britain.⁶⁸⁷ What was needed in this more modern, more rationalized political environment was a way for the diverse elements of society to gain access to parliament without instituting a new set of *locally* varied suffrages.

How was one to achieve a sociologically satisfactory inclusion of the salient divisions in

⁶⁸⁶ Ibid., 118. See also 206: “The changes made by the Reform Act, and especially the abolition of the various rights of voting formerly to be found in different towns, and the establishment of one uniform Franchise in all the English boroughs...tended somewhat to impair the character of the House” with regard to “representing most of the different classes of society, and of the various and conflicting opinions and interests to be found in the Nation.”

⁶⁸⁷ Bagehot, “Parliamentary Reform,” 223. While Bagehot and company were correct in *retrospectively* placing a high value on the unreformed variegated franchise, they were wrong in *prospectively* recommending it as the next stage of reform: “The fact that the former variety in the rights of voting did, at least to a certain degree, answer the purpose described, cannot be denied, but it would scarcely be practicable in the present state of society to return to the system of allowing such arbitrary differences to exist between different places”; Grey, *Parliamentary Government*, 214.

Grey was here simply applying to the topic of the suffrage the idea, familiar in nineteenth-century political thought, that variety, however salutary, was extremely fragile when confronted with the standardizing tendencies of modern reformism. Constant gave a characteristic statement of it; although “the freest country in our world, Great Britain, is governed by very diversified laws,” it was unfortunately true that “this variety could hardly serve as a model” for theorizing or designing institutions from scratch; Constant, *Principles of Politics*, 155.

society without recourse to a mode of suffrage that had become an anachronism? Grey articulated more the intimations of a plan, a list of the pieces that a satisfactory reform would have to include, than an actionable scheme.⁶⁸⁸ Yet the general thrust was clear: supplementing the local constituency with other units of representation. “The present facilities of communication,” he urged, could be utilized to enable “men united together not by living in one place, but by engaging in some common pursuit” to vote for “a common Representative.”⁶⁸⁹ This transcendence of territoriality as the grounding for the distribution of seats would allow for representatives elected exclusively by specific “classes” and “industries.”⁶⁹⁰ Grey did not descend into detail regarding the allocation of seats to particular classes, professions, and sectors of the economy, but three aspects of his sketch stand out.⁶⁹¹ First, much like Harris, he emphasized that the most important beneficiary of these quotas would be “working men.”⁶⁹² Second, there was an openness to his call for profession-based representation that even the zeal of Harris to catalogue and integrate the existing corporate bodies did not rival: Grey seems to have envisioned that even professions which had not already developed civil-society associations should be organized for the purpose of sending a member to parliament.⁶⁹³ Third, in contrast to the other authors examined heretofore, he empowered the Commons to hold

⁶⁸⁸ On the way Grey thought about his proposals, see James Winter, “The Cave of Adullam and Parliamentary Reform,” *English Historical Review*, vol. 81, no. 318 (1966), 50.

⁶⁸⁹ Grey, *Parliamentary Government*, 214. The thought that “modern technologies of communication and locomotion” should be understood as having eliminated “physical proximity” as a proper basis for constituency construction are still heard by radical reformers today; see e.g. Thomas Pogge, “Self-Constituting Constituencies to Enhance Freedom, Equality, and Participation in Democratic Procedures,” *Theoria*, no. 99 (2002), 43.

⁶⁹⁰ Grey, *Parliamentary Government*, 213-4.

⁶⁹¹ In addition to the three highlighted here, he also favored the more conventional proposition of expanding university representation; *ibid.*, 209-13.

⁶⁹² *Ibid.*, 213.

⁶⁹³ “I am not aware of any reason why those who have worked in certain trades for a given time should not be registered and formed into a corporate body with the right of electing Members of the House of Commons”; *ibid.*, 213.

Grey’s work in particular reveals the continuity between the more radical version of the English mirror theory and the continental tradition of corporatist representation; on the latter, see Anthony Black, *Guild and State: European Political Thought from the Twelfth Century to the Present* (Transaction Publishers: New Brunswick, NJ, 2003), part 3.

internal elections. These intra-Commons elections were for two groups of members: (a) twelve-to-fifteen life-tenured members of special eminence or expertise⁶⁹⁴; (b) a supplement of a “limited number of Members” that would enable the party in government to hold a more stable majority.⁶⁹⁵

Summing up Grey’s place in this tradition is not a straightforward task.⁶⁹⁶ On the one hand, he is almost an emblem of the theory of the differentiated suffrage. His endorsement of it as a leader of mid-Victorian Whiggery and the son of the second Earl testifies to its mainstream appeal in the period, and his willingness to embrace creative innovations of the electoral fabric evinces the resources for institutional redesign inherent in the theory. For Grey, the variety of suffrages was as eternal in its status as a truth of representative government as it was adaptable in its applications to particular political contexts. On the other hand, he endorsed reforms that accorded uneasily with the tradition: the third of the proposals considered in the previous paragraph, as will emerge in the next chapter, undercut or at least stood in tension with core normative values of the theory; and his endorsement of a form of minority representation, the cumulative vote, took him into terrain foreign to that of the differentiated suffrage.

The ambiguous philosophical position underlying Grey’s relationship to the variety-of-suffrages school did not trouble, of all people, G.J. Holyoake, the atheist and socialist whom we saw in chapter two developing Mill’s theory of toleration into a demanding ethic of a harmonious public sphere. Holyoake cited Grey as an exemplary writer on reform⁶⁹⁷; this alignment of figures so disparate in their politics and social backgrounds illustrates pointedly the diffusion of this vision of representation, corroborating the complaint of the democrat Albert Venn Dicey (about whose

⁶⁹⁴ Ibid., 217-9.

⁶⁹⁵ Ibid., 229-35. Similar measures – known today as the “Majority Bonus System” – are in use in Greece and Italy.

⁶⁹⁶ See e.g. Gavin Coull’s oscillation between treating Grey’s reform plans as indicating his partisan impartiality or as fundamentally an exercise in Whiggery; Coull, “The Third Earl Grey, the Coming of Democracy and Parliamentary Reform, 1865-67,” vol. 87, nos. 1-2 (1995): 11, 15, 192.

⁶⁹⁷ Holyoake, *The Liberal Situation* (London: London Bookstore, 1865), *passim*.

opposition to the variety of suffrages much more will be said in the following chapter) that “this view is entertained by persons who disagree in everything else.”⁶⁹⁸

Like Harris, Holyoake was more eclectic in the philosophical sources of his thought on representation than the Whig of Bagehot's stripe who rigorously eschewed any invocations of abstract right; Holyoake decried the withholding of the franchise as the violation of “a moral right” and equated the condition of the “non-electors” with that of “the slave.”⁶⁹⁹ Also in step with Harris, however, was the fact that his heterodox pronouncements did not issue in a substantive theoretical dissent about the foundations and composition of parliament. Quite the contrary; the extent of his agreement with the prevailing tenor of the period is well captured in his unequivocal condemnation of simple electoral democracy as a relic of the old “Radical rut.”⁷⁰⁰ Unsurprisingly, given his working-class roots and sympathies, Holyoake did not himself predict any great ills from the working-class hegemony that would come from immediately lowering the suffrage. Nevertheless, he felt that an “absolute guarantee” had to be given against the newly-enfranchised groups “swamping” the other elements in society.⁷⁰¹ He was adamant that it was no moral gain at all to effect a mere swap of class power, to put “the educated and wealthy classes” into the “position” of “sufferance” which had traditionally belonged to those below them in the social hierarchy.⁷⁰² On the contrary, the only just mode of settling the reform question was to arrive at a suitable system of “qualified franchise.”⁷⁰³ Holyoake did not put forth a full scheme of his own, but he did emphasize his

⁶⁹⁸ Dicey, “The Balance of Classes,” 67. Holyoake himself noted the seeming oddity that he, a poor man once jailed for blasphemy, would speak in support of “an Earl,” yet the latter was “the chief politician who has seriously proposed to obviate the difficulty and discredit of partial representation”; *Liberal Situation*, 7.

⁶⁹⁹ Holyoake, *The Workman and the Suffrage* 10; *The Liberal Situation*, 5.

⁷⁰⁰ Holyoake, *Liberal Situation*, 32.

⁷⁰¹ *Ibid.*, 32.

⁷⁰² *Ibid.*, 32.

⁷⁰³ *Ibid.*, 1.

enthusiasm for “Earl Grey’s scheme, so far as relates to the establishment of Guilds,” as a mechanism to “enable Labour to be heard in its own name in the House of Commons” and to give “some representation to their own feelings, interests, and ideas” that did not risk an “absolute transfer of power” that would wrongfully put all other groups at the mercy of the laboring element.⁷⁰⁴ Thus on the “franchise question” there was little daylight between the radicalism of the activist for working-class emancipation and the radicalism of the Whig patrician.⁷⁰⁵

Harris, Stapleton, Grey, Holyoake – thinkers of conflicting temperaments and allegiances all drawn to a traditional theory, counterintuitively, for the sake of the radical potential intrinsic to it for reimagining the sites and scope of representation. Fulfilling the promise of a mirroring Commons and maintaining fidelity to the bedrock precept of differentiation in the suffrage did not mean timidity in confronting the nation’s greatest institutional question.

For all its vibrancy and widespread approval in its mid-Victorian heyday, by the end of the century the practical failure of this vision was apparent. Its active political force deteriorated in the face of the defeats of the Second and especially Third Reform Acts, the latter of which established a uniform and inclusive (though not quite universal) suffrage and equal electoral districts; its philosophical cogency diminished as the egalitarian and democratic Idealist school made incursions against the more utilitarian and experiential outlook to which the variety of suffrages was yoked.

Yet the theory did not suddenly evaporate; amidst a slew of minor, un compelling appearances⁷⁰⁶ it would receive at least one profound, vigorous *fin de siècle* statement. This came from W.E.H. Lecky, the historian and philosopher who made an appearance as a theorist of toleration in

⁷⁰⁴ Ibid., 7, 11.

⁷⁰⁵ Ibid., 3.

⁷⁰⁶ See e.g. some of the pronouncements charted in Andrew Jones, *The Politics of Reform, 1884* (Cambridge: Cambridge University Press, 1972), 3, 27, 110-1.

chapter two. In his magisterial *Democracy and Liberty* of 1896 Lecky expressed the Mackintoshian outlook with about as much fidelity as is imaginable after the passage of eight transformative decades. It is a testament to the tenaciously liberal appeal of this theory that it could be defended less than a half-decade shy of the twentieth century by a sitting Liberal Unionist MP (as Lecky was at the time) as the best possible institutionalization of liberal values.

Lecky's political thought was more nuanced than the reactionary paternalism often attributed to him.⁷⁰⁷ He was, for instance, an advocate of the referendum, a firm critic of "plutocracy," and a sympathizer with many aspects of trade-unionism.⁷⁰⁸ But these modern sympathies did not dampen his disaffection with one prominent feature of turn-of-the-century politics: the uniform democratic suffrage.⁷⁰⁹ In its place, he advocated a modified version of the "old system of representation" whereby, through "a diversity in the system of election," it was possible to "represent, and to represent in their due proportions, the various forms and tendencies existing in the nation."⁷¹⁰ The advent of electoral democracy had accustomed Britain to a condition "much less truly representative" than it had experienced under the older arrangements, but this change in political form did not correspond to any change in the ultimate source of legitimacy for legislative assemblies, which was "to represent with the same completeness and proportion the various and often conflicting class interests, so that the wants of each class might be attended to and the grievances of each class might be heard and redressed."⁷¹¹

If Lecky was acute in bringing intellectual and political history to bear in support of his

⁷⁰⁷ For the reactionary portrait of Lecky, see B.E. Lippincott, *Victorian Critics of Democracy*, ch. 7.

⁷⁰⁸ See, respectively, *Democracy and Liberty*, vol. 1, 288-9; vol. 1, 393-6; vol. 2, 468.

⁷⁰⁹ The villain in Lecky's story of the triumph of this democratic notion of the suffrage was Rousseau; the *Social Contract* set in motion the (not entirely legible) process that would ineluctably lead to democracy. *Democracy and Liberty*, vol. 1, 12.

⁷¹⁰ Lecky, *Democracy and Liberty*, vol. 1, 2.

⁷¹¹ Lecky, *Introduction to Democracy and Liberty*, revised edition (London: Longmans, Green, and Co., 1899), vii; *Democracy and Liberty*, 12.

preferred vision of representation, he was lacking as a predictor of future trends; he prognosticated an imminent return to the old model once Britons had come to realize that “democracy destroys the balance of opinions, interests, and classes on which constitutional liberty mainly depends.”⁷¹² The mirror theory, thought Lecky, was a timeless truth that would outlive electoral democracy, which was neither the endpoint of political history nor the last word on the theory of representative institutions. His prediction has yet to be proven right, though out of our modern “crisis of democracy” it remains unclear what institutions await liberal societies in the coming decades.⁷¹³

⁷¹² Lecky, *Democracy and Liberty*, 256-7; see also 264, 276.

⁷¹³ Take, for instance, recent reinterpretations of democracy as “proportionality” which, amidst a host of differences, share some of their basic structure with the institutions in this chapter. See e.g. Harry Brighouse and Marc Fleurbaey, “Democracy and Proportionality,” *Journal of Political Philosophy*, vol. 18, no. 2 (2008): 1-19

Chapter Four

Diversity without Democracy, The Theory of the Variety of Suffrages, Part Two: Values and Criticisms

In 1967, exactly a century after the Second Reform Act which marked the beginning of the end for the liberal fermentation in the theory of nondemocratic but representative government, Hanna Pitkin spoke of the theory of descriptive representation as quite obviously “only a partial view” of the subject.⁷¹⁴ As another theorist has written, Pitkin’s assessment was typical of the unpopularity into which descriptive representation had fallen within normative political theory in the second half of the twentieth century.⁷¹⁵ While descriptive representation has returned to prominence in recent years, a turn largely spurred by deliberative democrats in search of means to enrich deliberation in assemblies through the inclusion of a wider range of viewpoints,⁷¹⁶ most scholars today inhabit a normative universe from which the idea of engineering electoral arrangements to ensure that the composition of the assembly accord with a predetermined sociological analysis appears alien at the least, and likely also illiberal, reactionary, or paternalistic – in direct contrast, it might be added, to the verdict of Holyoake that a “Qualified Suffrage” was the antidote to the “paternal theory” still held onto by Victorian patricians.⁷¹⁷ It is thus particularly incumbent upon us to probe the reasons why, at a high-water mark for British liberalism, so many thinkers subscribed to a view which within a century would look almost a relic to political theory. Now that we have seen the range of sociological and institutional permutations of mirroring reform, we need to inquire into

⁷¹⁴ Pitkin, *The Concept of Representation* (Berkeley: University of California Press, 1967), ch. 4.

⁷¹⁵ Jane Mansbridge, “What does a representative do? Descriptive representation in communicative settings of distrust, uncrystallized interests, and historically denigrated status,” in *Citizenship in Diverse Societies*, eds. Will Kymlicka and Wayne Norman (Oxford: Oxford University Press, 2000): 99-124, 102.

⁷¹⁶ See e.g. Mark Rabinder James, “Descriptive Representation in the British Columbia Citizens’ Assembly,” in *Designing Deliberative Democracy*, eds. Mark Warren and Hillary Pearse (Cambridge: Cambridge University Press, 2008), 106-26; Mark Brown, “Citizen Panels and the Concept of Representation,” *Journal of Political Philosophy*, vol. 14 (2006): 203-25; Iris Marion Young, “Justice, Inclusion and Deliberative Democracy,” in *Deliberative Politics: Essays on Democracy and Disagreement*, ed. Stephen Macedo (Oxford: Oxford University Press, 1999), 151-8.

⁷¹⁷ Holyoake, *Liberal Situation*, 33, 31.

the values which motivated the theory, which gave it its meaning and appeal. Why did the diverse, inclusive, mirroring Commons strike so many mid-Victorians as a cornerstone political good? This chapter is directed toward answering this question.

First, a preliminary observation about the relationship between this chapter and the previous one is in order. The level of values was less divided than the level of schemes. While particular institutional plans varied almost endlessly, a relatively stable set of values underpinned endorsement of the variety of suffrages, of which the most salient will be investigated here. Although there is a striking degree of consistency in the articulation of these values across the spectrum of our authors, certain authors gave greater weight to some values over others – and some authors’ presentations of the normative dimension of their schemes exposed strains and fissures in the connections between these values. In the course of presenting the different ends and ideals which coalesced in the theory of the variety of suffrages, I will also explore these tensions and the criticisms to which they gave rise, both from friends and foes of the theory – with the exception, in most cases, of criticisms from a democratic perspective, which will be treated in chapter five.

Four values formed the normative core of support for the variegated franchise: justice, the rule of public opinion, deliberation, and stability. Each of these – and the criticisms which they provoked – will be examined in turn.

1) Justice

The first of these values, justice, was the least clearly articulated of the four. Appeals to it were made, but usually in an undertheorized, unsystematic manner; it seldom received a fully-fledged argument demonstrating its connection to their preferred electoral system. This peculiarity of the variety-of-suffragists’ treatment of justice derives, I suspect, from trepidations about the relationship between justice and the consequentialism (relatively inclusive and undogmatic as it was) that dominated the public-intellectual landscape of the time. The allergy to natural rights claims that

marked the bulk of these authors extended to the discourse of justice, which likewise seemed to push in the direction of an individualistic egalitarianism that, if accepted, would ultimately usher in a democratic franchise.⁷¹⁸ With only a few exceptions, the authors in this chapter were not philosophers, and they lacked the philosophical resources or self-confidence that emboldened Mill to demonstrate that, despite the ordinary-language distinction between justice and expediency, justice could feature coherently in moral-political discourse without positing its “existence in Nature as something absolute.”⁷¹⁹ As a result their propensity was to speak of the mirroring Commons more as a source of benefits than as a site of justice.

Nevertheless, something very much like justice (and occasionally even the fraught word itself⁷²⁰) underlay the imperativeness characteristic of the variety-of-suffragists’s advocacy. In particular, the moral gravity with which they imbued their frequent pronouncements that the accurate parliamentary reflection of society *just was* what made the British government *representative* – that if the image of the nation in the Commons was distorted then the nation lacked a government worthy of that august adjective – bespeaks a conviction that representativeness as they understood it was not simply one among a number of commensurate political goods which, in the complicated

⁷¹⁸ The heart of the “the democratic theory” was “its supposed conformity with the abstract rights of man”; Bagehot, “Parliamentary Reform,” 202.

For example, on Whigs’ utilitarianism and aversion to abstract principle more generally, see Biancamaria Fontana, *Rethinking the politics of commercial society: the Edinburgh Review 1802-1832* (Cambridge: Cambridge University Press, 1985) 43; Southgate, *Passing of the Whigs*, 144. Of the figures discussed in this chapter Lecky alone, so far as I have been able to discover, articulated a serious dissent from philosophical consequentialism; see Lecky, *History of European Morals*, vol. 1, 34-54.

⁷¹⁹ Mill, *Utilitarianism*, in *CW*, vol. 10, 240.

Witness, for example, the ham-handedness with which even one of the most philosophically acute members of the school, Bagehot, strove to demonstrate the unfoundedness of “the sense of unfairness” engendered in some readers by his project of enfranchising a laborer in one location but not in another. He could do little more than assert feebly that “there is no injustice in allowing expediency to adjust the claims of persons similarly entitled” – which was the very issue under debate. “Parliamentary Reform,” 224.

⁷²⁰ As when Cole portrayed his scheme, in contrast to the “sham” that was the “present system,” as “founded on reason and justice”; *Middle Classes*, 40.

conditions of modern politics, had to be traded off against one another.⁷²¹ In a way that parallels the conclusions in chapter one about Mill on the liberty of discussion, by and large proponents of the differentiated suffrage sought, without officially questioning a basic consequentialist framework, to remove their cherished vision of representation from the process of “weighing and balancing” multifarious considerations, and instead to establish the differentiated suffrage on its own absolute footing.⁷²² This belief in the lexical priority of representativeness *vis-à-vis* other qualities of the Commons comes through in Bagehot’s claim that, even if the course of policy being pursued were excellent, “the House of Commons will be defective” so long as “the single, unbending franchise introduced in 1832” persisted in excluding the working class, or in Stapleton’s remark that “the theory of the Constitution is, that every subject of the Queen ought to be actually or virtually represented: but stretch the existing representation as you may, it cannot be made to adapt itself to that theory. The really poor are neither actually nor virtually represented.”⁷²³ Similar sentiments abound in this literature.

Whether we call it justice or adopt some other name for the entitlement that all “really organic interests and ideas” find spokesmen in the Commons, the critical point is that the tradition of electoral variety ascribed an independent normative weight to the inclusion of the full range of important classes, views, and segments of society, a weight not clearly reducible to any utility calculus. Unlike an orthodox Benthamite such as James Fitzjames Stephen who launched a blistering attack on Mill for distinguishing, in *The Subjection of Women*, between the categories of “wrong in itself” on the one hand and “hindrances to human improvement” on the other,⁷²⁴ even such an unsteady subscriber to the mirror theory as W.R. Greg could describe the parliamentary

⁷²¹ For more on the question of tradeoffs between representativeness and other goods, see section (3).

⁷²² George Herbert, “Liberty and Socialism,” 107.

⁷²³ Bagehot, *English Constitution*, 315. Stapleton, *Suggestions*, 46.

⁷²⁴ JF Stephen, *Liberty, Equality, Fraternity*, 129.

marginalization of the working class as not only a “defect” but an “injustice.”⁷²⁵ This was not justice in the democratic sense of electoral equality, but it was what we might term “justice as inclusivity.” An inclusive constitution (“the fair participation of *all* classes in the representation and the government”) was of the very essence of *representative* government – it was what separated it, as we have encountered time and again in this chapter, from democracy (the rule “of numbers”) and oligarchy (the rule “of property”).⁷²⁶ These rival regimes were less just because they were less inclusive, because they did not carve out space for the several groups which constituted the nation. While the vast majority of the authors surveyed here would have disagreed with Mill that it was “a personal injustice” to be denied the vote,⁷²⁷ this disagreement was not equivalent to a denial that the misdistribution of the suffrage was a case of injustice. The locus of the injustice had merely shifted, from the non-possession of the suffrage to the lack of a spokesman with whose social-ideological position one could identify. For the variety-of-suffragists, a deficiency in representativeness was very much a deficiency in justice.

The significance of this freestanding normative investment in sociological inclusivity can be grasped more clearly when contrasted with another prominent nineteenth-century theory of representative government, one in which elitist notions of political capacity entirely trumped descriptive aspirations. In the decades preceding the climax of the variety of suffrages in Britain, across the channel the historian and politician François Guizot and the doctrinaire school combatted the idea that the representative system properly conceived had anything to do with imaging or reflecting the underlying society.⁷²⁸ The doctrinaire notion of “political capacity” was at the opposite

⁷²⁵ Greg, “Parliamentary Purification,” 567.

⁷²⁶ Greg, “Representative Reform [2],” 257; “Parliamentary Purification,” 567.

⁷²⁷ See ch. 3, note 632.

⁷²⁸ This point has been made by Pierre Rosanvallon: “there is nothing to ‘represent,’ in the etymological meaning of the term, for Guizot”; *La démocratie inachevée* (Paris: Gallimard, 2000), 119. See also *Le Moment Guizot* (Paris: Gallimard, 1985),

extreme from descriptiveness: it was designed to screen all but men of “reason, truth, and justice” out of the electoral process.⁷²⁹ As prime minister in the latter days of the July Monarchy, Guizot adamantly rejected any extension of the limited franchise of that regime – a franchise so restricted that, although Guizot consecrated his political career to the cause of middle-class government, the censitary requirement was actually too high for even most of the bourgeoisie to participate.⁷³⁰ Electoral politics, even in an era in which “the representative form of government” was the centerpiece of “the political institutions of Europe,” was a domain that belonged uniquely to the elite of the capable.⁷³¹

Guizot was not a popular figure with our group of British authors. His unpopularity was overdetermined; other reasons for their disfavor will be discussed in section (4). But it was anchored primarily in the contrast between the kinds of opinions for which the doctrinaires and the variety-of-suffragists believed there ought to be spokesmen in the assembly. Whereas Guizot wanted only objectively wise and reasonable ones to be entertained in the Chamber of Deputies, to British descriptivists non-judgmentalism about the “truth” or “reasonableness” of views held in the electorate was dictated by the commitment to representativeness. As Cole put it, in a striking display of the anti-Guizotian sensibility manifested by this vision of representation, “the Working Classes

93-4. It is also worth noting that the judgment that Guizot had emptied representation of any meaning substantially corresponded with Tocqueville’s blistering critique of the July Monarchy as a system in which the views and interests of only a narrow slice of the bourgeoisie had any voice; see Tocqueville, *Souvenirs* (Paris: Gallimard, 1999), 13-4.

⁷²⁹ François Guizot, *The History of the Origins of Representative Government in Europe*, trans. Andrew R. Scoble (Indianapolis: Liberty Fund, 2002), e.g. 295, 334. On this Guizotian doctrine and its relationship to his principle of “the sovereignty of reason,” see the introduction to this edition by Aurelian Craiutu, xii-xiii, as well as Craiutu, “Guizot’s Elitist Theory of Representative Government,” *Critical Review*, vol. 15. no. 3-4, (2003), 261-284; Rosanvallon, “François Guizot and the Sovereignty of Reason,” in Rosanvallon, *Democracy Past and Future*, ed. Samuel Moyn (New York: Columbia University Press, 2006), 117-26.

⁷³⁰ Only roughly 200,000 Frenchmen, out of a total population of 35,000,000, could meet the property requirement for the franchise; on the suffrage under the July Monarchy, see e.g., Furet, *Revolutionary France, 1770-1880*, ch. 7; Alan Kahan, *Liberalism in Nineteenth-Century Europe* (New York: Palgrave Macmillan, 2003), 36-37.

His obstinacy in the face of the campaign for electoral reform is widely credited with bringing about the February Revolution that ended the July Monarchy.

⁷³¹ Guizot, *History of Representative Government*, 12.

and the little shopkeepers connected with them, should have members of their own in Parliament, to represent and explain their wishes and opinions, and make their dumb voice articulate” whether or not “their grievances [were] real or imaginary.”⁷³² Similarly for Bernard Cracroft, a supporter of Gladstone’s failed reform bill of 1866 who nevertheless considered himself within this nondemocratic tradition of mirroring and interest-representation, the grounds for “introduc[ing] a distinct working class element into the House, in order to represent working class thought and feeling *there*” were unrelated to the character of their beliefs but hinged solely on their being “the third great interest in the country” alongside “land and commerce.”⁷³³ The evaluation of capacity did not enter into the matter of defining the boundaries of the representative system.

This disagreement with the doctrinaires emerges with particular clarity in Bagehot’s writings. Bagehot demanded that all opinions, regardless of their content, which were “extensively entertained” and “widely diffused” find entry into parliament.⁷³⁴ Electoral systems were not meant as techniques for confining the political process solely to correct views – ones that could in Guizotian fashion be recognized from some higher perspective as reasonable and true. The legislature, Bagehot underscored, had to contain “the sentiments, the interests, the opinions, the *prejudices*, the wants, of all classes of the nation.”⁷³⁵ The elevation of the value of inclusiveness over any possible objective standard for electoral regulation stemmed in turn from a foundational feature of his political theory, which was that the proper arbiter of the performance of a “parliamentary government” could only be the public opinion of the nation:

Who is to judge [whether parliament is doing well]? Is it to be some panel of philosophers, some fancied posterity, or some other outside authority? I answer, no philosophy, no posterity, no external authority, but the English nation here and now.

⁷³² Cole, *Middle Classes*, 23.

⁷³³ Cracroft, *Essays*, vol. 1, 47-8.

⁷³⁴ *Ibid.*, 195.

⁷³⁵ Bagehot, “Parliamentary Reform,” 195. My italics.

Free government is self-government—a government of the people by the people.⁷³⁶

Although few of his fellow variety-of-suffragists traced their institutional preferences back to the foundations of political epistemology in this way (and likely even fewer would have agreed with this kind of skeptical internalism about political judgment), they were all united in the conviction that the fortunes of a favored agenda or the desire to secure the field for *correct* tenets could not be allowed to trump the *representative* dimension of political life.⁷³⁷

The rejection by Bagehot and company of the doctrinaire attempt to replace descriptive representation with a strictly capacitarian conception of electoral politics was, it should be said, partly *epistemic* in its motivation – as will be shown in section (3), subscribers to the differentiated franchise were not only *descriptivists* but also *deliberativists*, and as such they ascribed a central role in the process of answering political questions to the national discussion that culminated in the “deliberative House of Commons.”⁷³⁸ Yet it was equally, as we have seen, a difference at the level of justice, of what was owed under representative government to the different segments of the

⁷³⁶ Bagehot, *English Constitution*, 306. Bagehot, of course, did not have a democratic interpretation of the meaning of that last phrase; in fact, he thought that the “American form of government” was “in every true sense less popular” than the English”; “The Present Crisis in America,” in *CW*, vol. 6, 173.

⁷³⁷ This is not to say that these authors always lived up to their theory. In particular, they occasionally blanched in the face of socialism, and the fear on the part of some of these writers that the people were sure to embark on mass expropriation if so empowered kept them from complete consistency in their descriptivist commitments; see e.g. Greg, “Representative Reform [1],” 466; Donald Winch, “The Cause of Good Government,” 103 (on Macaulay); Cole, *Middle Classes*, 81; Eardley-Wilmot, *Safe Plan*, 8. Nevertheless, while the majority of variety-of-suffragists, like the majority of public intellectuals at the time, were pro-free-market, the terror at impending socialism was for most of them constrained in comparison to those political writers most resistant to mirroring values; see e.g. Salisbury, *Lord Salisbury on Politics*, e.g. 33, 144, 186, 210; John Austin, *A Plea for the Constitution*, 19-21. Austin, for one, had a strictly authorization-based grounding for representation; *Plea*, 5.

In truth it is hard to find a single prominent Victorian thinker who did not at one point veer away from a fully consistent logic of representativeness out of fear for the fate of “property.” This extended even to JS Mill, whom some scholars are wont to claim for socialism. As a teenager Mill boldly declared that whether or not “the people are desirous of destroying property” was “irrelevant” to the issue of parliamentary reform. He betrayed this declaration a decade later, however, when he granted that the question “of fact” about the degree to which the “body of the operatives, or that portion of the body whom the rest follow, do in fact entertain opinions or feelings at variance with any of the primary principles of good government” ought to be investigated in conjunction with plans for the “extension of the suffrage.” Although he would eventually return to a more consistent non-judgmentalism in representation upon his conversion to PR, not even the “saint of rationalism” was always able to maintain his attachment to representative principles in confrontation with the perceived threat to property. See Mill, Speech on the British Constitution [2], 19 May 1826, in *CW*, vol. 26, 380; “Rationale of Representation,” 32.

⁷³⁸ Bagehot, “Conservative Criticism on Liberal Politics,” in *CW*, vol. 6, 321.

community. To hold to a rigid censitary cut-off – to maintain, as Guizot had done, that the “scattered elements of reason” which the Chamber had to “collect and concentrate” were all effectively located within a narrow rung of the socioeconomic ladder⁷³⁹ – was to evacuate representative government of any meaning and instead to institute simple class-rule.⁷⁴⁰ It was to supplant the vision that politics should have a connection to society in its integrity with the *a priori* selection of a part that should rule over the whole.

The disavowal of suffrage-regulation as an arena for the direct implementation of a broader notion of political capacity entailed, as these mirroring theorists were willing to admit, giving up on the traditional dream of the Commons as a congress of the nation’s wisest individuals. Indeed, they were cognizant not only that the descriptive enterprise would *in practice* produce a membership that would deviate from what a process that selected only for wisdom or correctness would yield; they were also aware that they were abandoning it as a *theoretical* ideal. They could not agree with the young Salisbury that “the very Utopia of representation” would be just to inject the greatest quotient of intelligence possible into the Commons.⁷⁴¹ True, the variety-of-suffrages school was certainly not

⁷³⁹ Guizot, *History of Representative Government*, 345.

⁷⁴⁰ A very similar argument about the betrayal of representative principles involved in excluding a group from the vote out of consideration of its intellectual character or the content of its view was taken up by the women’s movement in response to liberal politicians who cited women’s conservatism as a reason to continue their disfranchisement: “Surely representative institutions require that all differences of opinion should have their due and proportionate weight in the legislature. No class of persons ought to be excluded on account of their political opinions....A representative system which excludes half the community from representation surely is a farce. The question ought not to be ‘How will women vote if they have the franchise?’ but, ‘Is representative government the best form of government that can be devised?’ If the answer is in the affirmative, the exclusion of women from electoral rights can in no way be justified”; Millicent Garret Fawcett, “The Electoral Disabilities of Women,” in *The Subjection of Women: Contemporary Responses to John Stuart Mill*, ed. Andrew Pyle (Bristol: Thoemmes Press, 1995), 232-3. The essay originally appeared in the *Fortnightly Review*, May 1870. See also Pyle’s introduction to this edition, xxii. To put Fawcett’s thought here in the vocabulary that has guided this chapter, she saw the gender restriction as instituting *male class-rule*, as opposed to representative government. This argument was still crucial for the New Liberals in their advocacy of women’s suffrage: see e.g. L.T. Hobhouse, *Liberalism*, in *Liberalism and Other Writings*, ed. James Meadowcroft (Cambridge: Cambridge University Press, 1994), 128.

⁷⁴¹ Salisbury (then Lord Robert Cecil), “Theories of Parliamentary Reform”, 56.

untouched by elitist presuppositions or indifferent to concepts of capacity⁷⁴²; moreover, as noted above with regard to Greg, in addition to their proposed instantiations of the norms of mirroring they hoped as well that the intellectual caliber of MPs could be bettered, and occasionally devised amendments specifically geared to this purpose. Yet they were in general clearheaded enough to perceive that the maximization of intellect or right-thinking and the achievement of representativeness stood in tension; they grasped that the two could not be pursued simultaneously without granting priority to one over the other. While one does not encounter in this tradition statements equivalent to accepting (what are often given as *reductios* of projects of descriptive representation) that “morons should be represented by morons,”⁷⁴³ mid-century mirror authors were not afraid to acknowledge that their search for representativeness involved some intellectual sacrifices.⁷⁴⁴ Hence Bagehot’s explanation of the outcome he desired from measures of working-class representation. This was not “simply to find representatives in the best of the working classes,” to give force to “the most thrifty and careful of the working classes...the best judging of their class.” Quite the contrary: “we are not now seeking legislators who will exercise a correct judgment, but rather spokesmen who will express popular sentiments.”⁷⁴⁵ With a frankness that is refreshing in comparison to similar debates today (as well as with their own poor handling of a parallel tension between values that is the subject of section [3]), Bagehot and company recognized that no institution could fulfill a mission of both guaranteeing the desired amount of diversity and selecting for only the wisest or most deserving members. To advocate the mirroring Commons was to

⁷⁴² See e.g. Bagehot, “Parliamentary Reform,” 203-4.

⁷⁴³ J. Roland Pennock, *Democratic Political Theory* (Princeton: Princeton University Press, 1979), 314. See also A. Philips Griffiths and Richard Wollheim, “How Can One Person Represent Another?,” *Aristotelian Society* vol. 34 (1960), 190.

⁷⁴⁴ See e.g. Mackintosh’s frank statement that “the best choice” was “not the sole object of representation”; “Universal Suffrage,” 191-2.

⁷⁴⁵ Bagehot, “Parliamentary Reform,” 218-9. In this passage Bagehot was almost certainly criticizing his brother-in-law Greg, among others, for injecting an inappropriate elitism into their thinking about working-class representation.

dispense with the “truism” that “Government should be in the hands of the wisest” in favor of a parliamentary condition with more modest intellectual expectations: instead, “all which we ought to desire” was that the Commons should “contain true and adequate exponents of all class interests [and] should coincide in opinion with the fair intelligence of the country.”⁷⁴⁶ In consequence it is not surprising to find these authors occasionally offering the consoling thought that great knowledge and sagacity were not needed to be an MP – thus one of the central themes in Bagehot’s studies of contemporary politics was that English government got on fine even though MPs were merely “excellent specimens of the average Englishman.”⁷⁴⁷ In selecting representativeness as the characteristic *par excellence* of the just legislature, the variety-of-suffragists were displacing the meritocratic notion of the electoral system as a means of filtering out a chosen body of the wisest citizens, and accepting that the individuals composing it might fall well short of what one would envision from “natural aristocrats.”⁷⁴⁸

Independent of its interaction with other values and empirical assumptions, however, the concentration on justice alone has only so much explanatory power; the goal of justice, as interpreted here, certainly does not demand the acceptance of these specific institutions. One question, in particular, has likely occurred to the reader. If inclusivity was important on grounds of justice, how could the exclusions which existed in some of these schemes – typically that of the rural laborer – be defended? If parliamentary inclusiveness was a defining attribute of the just society, why

⁷⁴⁶ Salisbury, “Theories of Reform,” 54; Bagehot, “Parliamentary Reform,” 200-1.

⁷⁴⁷ Bagehot, “The Unseen Work of Parliament,” in *CW*, vol. 6, 47; John Burrow, “Sense and Circumstances: Bagehot and the Nature of Political Understanding,” in *That Noble Science of Politics*, 178-9. And see Bagehot, “The Character of Sir Robert Peel,” in *CW*, vol. 3, 238-71.

⁷⁴⁸ See e.g. *The Federalist*, nos. 10 and 57. For a broad but brief overview of the “older” notion of elections as techniques for ratifying “merit and virtue,” see Rosanvallon, *Democratic Legitimacy*, 53-9. The most historically and theoretically sophisticated analyses of the classically elitist side of elections are Olivier Christin, *Vox Populi: Une histoire du vote avant le suffrage universel* (Paris: Seuil, 2014); Bernard Manin, *The Principles of Representative Government* (Cambridge: Cambridge University Press, 1997).

did some of these plans fall short of comprehensiveness in the picture of society that they wished to capture?

To answer this question, and to begin filling out a normative picture that is left underspecified by justice alone, we need to turn to a second normative plank of the mirror theory: the rule of public opinion.

2) The Rule of Public Opinion

The mere name of this second value tells us little. For attestations of the rightful reign of public opinion abound in the mid- and late-Victorian periods. John Morley satirized this doctrine for becoming a kind of national shibboleth,⁷⁴⁹ and even when a writer took issue with the slogan, as did the economist Stanley Jevons, they frequently wound up acknowledging that there was no other possibility but that public opinion be “the ultimate court of appeal.”⁷⁵⁰ Both the normative investment in the idea that the primary force in politics ought to be public opinion and the impression that it was in fact the directive puissance in public affairs were at all-time highs.⁷⁵¹ How could so ubiquitous a talking-point – one which received assent from those who were anything but hard-and-fast descriptivists about representation – give an answer to the vital question just posed? How did this omnipresent refrain operate among the variety-of-suffragists?

First, in those authors who advocated the exclusion of certain groups from the suffrage, invocation of the rule of public opinion served to justify those exclusions. This issue brings us face-

⁷⁴⁹ “Among the numerous grounds for national complacency which the newspapers discover for us...none is more conspicuous or more delightful than the irresistible might of public opinion in this favoured land....But none of these things move us so mightily as the ceaseless panegyrics upon the majesty of public opinion”; Morley, “The Weakness of Public Opinion,” in *Modern Characteristics*, 239-40.

⁷⁵⁰ Jevons, *The State in Its Relations to Labour* (London: Macmillan, 1882), 20. Other important contemporary testaments of the centrality of public opinion in the Victorian political psyche are Leslie Stephen, “Our Rulers – Public Opinion,” *Cornhill Magazine*, vol. 21, no. 123 (Mar. 1870): 288-98, Dicey, *Lectures on the Relation between Law and Public Opinion in England during the Nineteenth Century* (London: Macmillan, 1905), ch. 1.

⁷⁵¹ See e.g. Saunders, *Democracy and the Vote*, 7-8, 23, 134.

to-face with a fundamental divide within the camp of electoral diversity: those who believed that the population of rural laborers ought not to possess the suffrage, and those who sought to include them as one among the several basic elements of British society. The omission of rural workers from their reform proposals of the former stemmed, as noted above with regard to Bagehot, from the conviction that they lacked substantive opinions about politics. In contrast to the artisans in a select batch of urban centers whom Bagehot sought to include in order that the distinctive sentiments on politics which had developed among them could gain a parliamentary hearing, in the rural and underdeveloped semi-urban areas (as his brother-in-law put it) the “lower classes had no political principles and no social strength or independence”; they displayed an “utter inability to form any political opinion.”⁷⁵² In light of the opinionlessness which characterized all but the advanced artisans among the lower classes, democracy in mid-Victorian Britain could only be the rule of those with no opinions over those with opinions. It would effect the transfer of electoral power from “sincere” citizens acting on behalf of truly public “views and feelings” to “men who have no political convictions and scarcely any personal predilections”; the man “who has no political opinions at all” would now be the most numerous participant in elections.⁷⁵³ Given the great ethical weight which Victorians placed on sincerity and earnestness, the enactment of a democratic suffrage in conditions of a dearth of lower-class belief would mean a decline in the moral caliber of politics as judged from the perspective of the “ethics of belief.” But even more fundamentally, such an electoral situation would hinder the representative system from fulfilling its mission. It would impair the task of representation.

This impairment stemmed from the fact that, if the rural working classes were without opinions, then they necessarily did not contribute to that public opinion into alignment with which

⁷⁵² Greg, “Achievements of 1867,” 219, 212. And see ch. 3, note 543.

⁷⁵³ Greg, “Achievements of 1867,” 232; “Parliamentary Purification,” 577, 583.

these reformers sought to bring the Commons. Since the working and pauper classes did not participate in the formation of public opinion, for the simple reason that they had no opinions to offer to the national discussion, it would be inappropriate to grant them the suffrage. Being without opinions, they ought to be without the vote, because those who “had no opinion on matters of legislation and administration” by definition could not “send to Parliament members” who would represent their views.⁷⁵⁴ If the criterion for the possession of “political power” was some kind of “political capacity,” this capacity Bagehot defined largely in terms of being “intellectual enough to form opinions” of one’s own – a far cry from Guizot’s notion of *capacité*.⁷⁵⁵ The result of enfranchisement not stopping at this threshold was that elections would introduce distortions of public opinion into the very process of composing a Commons. Public opinion, therefore, would not reign.⁷⁵⁶

By lifting the working class into a majority in all districts, then, democratization involved almost by definition a kind of usurpation; instead of public opinion ruling, the composition of parliament would be swayed by votes which had no opinion-content behind them.

But the case was potentially even worse than the analysis to this point has made out, for this necessary falsification of public opinion could be exacerbated by one (or, worse, a combination) of two deleterious processes. Since it is in Bagehot’s works that the vision of a gap between a government of public opinion and a democracy of the opinionless appeared most clearly, I will follow him here.

The first of these processes was that money would crowd all other considerations out of politics. With no convictions of their own determining them to cast their vote for a certain person

⁷⁵⁴ Bagehot, “History of the Unreformed Parliament,” 285.

⁷⁵⁵ Ibid., 304.

⁷⁵⁶ The enfranchisement of citizens without opinions could only by accident be neutral with respect to the translation of public opinion into parliamentary policymaking; namely, if the distribution of the votes of the opinionless happened randomly to match the true contours of public opinion.

or party, Bagehot believed that such opinion-less persons, who were “almost sure to be corrupt,” would give their vote to whichever side offered the largest bribe.⁷⁵⁷ Without the stake in politics that the possession of beliefs and principles furnished, there was no reason for them to “abstain from selling their vote,” and thus it was illusory to pursue democracy when democracy would only “mean the rule of money.”⁷⁵⁸ In all probability a democratic suffrage would yield a corrupt, cynical plutocracy, thereby sacrificing, for the sake of greater formal inclusiveness in the political system, the influence of genuine public opinion on the course of government.⁷⁵⁹

If nothing else, though, the thesis of working-class lack of belief would seem to have spared authors like Bagehot and Greg the prospect of “swamping” which typically frightened the defender of electoral variegation. For in the absence of beliefs, how could the enfranchised masses stand in sufficient unison to expel less populous groups from the representation? Bagehot’s second possible doleful outcome squared this circle. His prediction was that, although the un-advanced working classes lacked any definite ideas or principles to guide their political conduct, they would

⁷⁵⁷ Bagehot, “History of the Unreformed Parliament,” 305. Or in the words of his brother-in-law, “it seems probable that some of our democratic moves may produce effects the very reverse of democratic, opening wider and wider the doors of political life to rank and wealth, especially to hereditary wealth, and closing them more and more to real talent when unsupported by these adventitious aids”; “democracies, just like aristocracies – perhaps more than aristocracies – have a perpetual, nearly irresistible, tendency to degenerate into oligarchies”; Greg, *Rocks Ahead*, 34. This is connected with the descriptivist case for excluding the poor on corruption grounds above in note 640 of chapter three.

⁷⁵⁸ Bagehot, *English Constitution*, 403, 406. Several decades later Sidgwick was still following Bagehot almost exactly on this point; see *Elements of Politics*, 382-3.

⁷⁵⁹ The equation of democracy plus corruption yielding plutocracy was a frequent one, if not always connected as explicitly as in these authors to the perceived poverty of political conviction among the lower class; see e.g. Harris, *True Theory*, 20; Stapleton, *Suggestions*, 27; Salisbury, *On Politics*, 174; Mill, “Speech of 4 April 1864 on Corruption at Elections, in *CW*, vol. 28, 10-1. This dynamic was seen by some as especially rampant in America; e.g. Saunders, “Democracy,” in *Languages of Politics in Nineteenth-Century Britain*, eds. David Craig and James Thompson (Houndmills, Basingstoke: Palgrave Macmillan, 2013), 148. These “plutocratic” forms of corruption were indeed on the increase throughout the century until the late 1880s; see e.g. *The Nineteenth-Century Constitution, Documents and Commentary*, ed. H.J. Hanham (Cambridge: Cambridge University Press, 1969), 256-8. See also K. Theodore Hoppen, “Roads to Democracy: Electioneering and Corruption in Nineteenth-Century England and Ireland,” *History* vol. 81, no. 264 (1996): 553-571; Norman Gash, *Politics in the Age of Peel*.

There is an interesting resemblance here between the prediction that formal democracy would lead to practical plutocracy and Hobbes’s denial that in practice a democracy could be anything other than an “aristocracy of orators”; perhaps we could say that the former was the nineteenth-century version of the latter. Hobbes, *Elements of Law*, ed. J.C.A. Gaskin (Oxford: Oxford University Press, 1994), II.xxi.5. Given the present consternation about the oligarchic character of many twenty-first-century democracies, some prescience ought perhaps to be allowed to these writers.

nevertheless feel themselves “supreme in the country.”⁷⁶⁰ This feeling of class supremacy would lead them to form a “permanent combination” in order to ensure that the only candidates returned came either from their own class or from that subset of middle- and upper-class politicians who were willing to ape the manners of the working-man.⁷⁶¹ On this second scenario, Bagehot seems to have been presaging a kind of “identity politics” *avant la lettre*, where the clear perception of interests and the discussion of policy and principle would take a backseat to questions of personality and group membership. The working class, unguided by anything that could properly be called “political sentiments” but spurred on by “demagogues” and exultant at being liberated from having to “acknowledge their superiors,” would fill Westminster only with their “single class.”⁷⁶² On this second prognosis of democratized English politics, public opinion would be betrayed not by the outright reign of money, but by the replacement of the idea-possessing, public-opinion-shaping, politically experienced upper- and middle-classes with the blind majority of the working class. There is a sense, then, in which Bagehot and Greg offered the bleakest depiction of working-class swamping in this whole genre; for instead of one set of ideas and convictions crowding out all others, they predicted that a set of feelings and instincts unworthy even of the name of ideas and convictions would displace *all* true ideas and convictions. And hence an ideal which united every thread of mainstream nineteenth-century British political thought – that not wills but reasons be the currency of parliamentary government⁷⁶³ – would suffer a decisive demise.

Thus the first way in which the value of the rule of public opinion entered into mid-century

⁷⁶⁰ Bagehot, *English Constitution*, 174.

⁷⁶¹ *Ibid.*, 174.

⁷⁶² Bagehot, “Parliamentary Reform,” 205; and “The Defeat of the Ministry and the Prospects of Reform,” 307.

⁷⁶³ The principle received innumerable formulations: that the “House yields” only to “reason” and “argument,” that “the arms of reason” and not “mere will” be the tools of the Commons, that “not the mere will of the majority... govern a Nation, but justice and reason”; Inglis, *Parliamentary Reform*, 49; Mill, *Considerations*, 478; Grey, *Parliamentary Government*, 181.

mirror theory was to justify exclusion of the non-opinion-holding segments of the nation. Many Victorian intellectuals, of a range of political stripes, warned at one point or another in their political commentary of the dangers of ushering mass opinionlessness into electoral politics.⁷⁶⁴ Indeed, there was more than a family resemblance between the perception of this peril and a Henry Maine-strain of anti-democracy, which emphasized the intolerant hostility to untraditional ideas of the lower classes.⁷⁶⁵ But, so far as I have found, it was only within the more exclusionary strand of the mirror theory that this concern was elevated into a principle – we might call it the *opinion-holding principle* – which could serve to regulate the boundaries of the suffrage.

The opinion-holding principle could possess this justificatory power in virtue of the special link between their vision of accurate representation and *opinion* – the conjuncture of the rule of public opinion and the mirror theory of representation installed opinion as an important item on which the machinery of descriptive representation was to operate, a central piece of the picture to be taken, so to speak. For this reason I employed earlier (in writing specifically of Bagehot) the ungainly term *cognitivism* to describe a facet of their theoretical orientation; by this I mean simply that in the

⁷⁶⁴ Two of the great “university liberals” who were sympathetic to the democratic cause in their youth came to see the absence of genuine ideas among the newly enfranchised demos as a peril of democracy. James Bryce observed a degradation in the governing of large U.S. cities and attributed it to the Americans’ wrongheaded enfranchisement of recently arrived immigrants, a group that “can hardly be said to possess” “political opinions...for they have not had time to learn to know the institutions of their new country.” Similarly, Leslie Stephen bemoaned the impact of “newly emancipated masses without developed political convictions,” whom he feared were susceptible to demagogic priestly manipulation (especially in Ireland); in the terminology of this chapter, he worried that enfranchising the masses would lead to the replacement of “public opinion” with “clerical opinion.” Even those who had no inclination to turn their backs on a wider suffrage, such as John Stuart Mill and the Liberal MP and PR reformer Leonard Courtney, acknowledged that the question of whether “a large number of the inhabitants of these islands [were] capable of forming an opinion on the conduct of public affairs” lingered over much contemporary political contemplation;

See Bryce, *The American Commonwealth*, second edition, 2 vols. (New York: Commonwealth Publishing, 1908), vol. 2, 318; Jeffrey Paul von Arx, *Progress and Pessimism*, 32 and Stephen, “Are We Christians?,” in Stephen, *Essays on Freethinking and Plainspeaking*, 126-76; Courtney, “Political Machinery and Political Life,” *Fortnightly Review*, vol. 20, no. 115 (July 1876), 74; Mill, Speech of 2 November 1868 on the Westminster Election, in *CW*, vol. 28, 339.

⁷⁶⁵ It was my intention to have discussed the great legal historian Henry Maine’s pessimism about democracy under the rubric of “liberty of thought and discussion after Mill.” Since I allude to it at a couple points in the remaining chapters, a brief word ought to be said about it. Dissenting from a rival notion of democracies as fickle and unstable, in his 1885 tract *Popular Government* Maine launched an attack on democracy (understood by him as much in a Tocquevillian sense more as a social state than as an electoral rule) as the *regime of intolerance*. This was based in his idea that the average mind was deeply closed to all novel ideas. Therefore democracy meant an end to freedom of mind and a suppression of nonconformity – in everything from scientific inquiry to seeming trivialities of manners and fashion. See Maine, *Popular Government: Four Essays* (London: John Murray, 1885), *passim*.

long list of objects of representation which appears in these texts – classes, interests, groups, elements, stations, parts, opinions, ideas, sentiments, convictions, views – the latter half of the list, the cognates for belief, had a particular priority. The various attempts to divvy up the “objective” social space captured by the former half of the list, as we will see more clearly in the next section, were ultimately valued because they tended to correspond to differences of opinion or outlook. It was this correspondence which, they believed, saved their schemes from the charge of arbitrariness which would have ensued if they had proposed (to adapt Locke’s famous examples of civically irrelevant categories) to carve out special constituencies for those with “black Hair or gray Eyes.”⁷⁶⁶ The mirror theory – even when it was given the names of class or interest representation – was a mechanism for ensuring that the “grounds...of full debate,” the array of “arguments” and “differences of opinion” were positioned in the house in a manner that accorded with their felt strength in the nation at-large.⁷⁶⁷ To take institutional measures for the parliamentary presence of a group which one could reasonably expect *not* to have any distinctive political vision to advance (say, constituencies based on the first letter of one’s surname) was to violate the spirit of the theory by drawing distinctions without differences.⁷⁶⁸ From this perspective, to enfranchise those who not only had no distinctive vision, but rather *no vision at all*, was to court political risks which were not worth running. Even though the making of philosophically precise distinctions between categories like class or interest, on the one hand, and opinion or perspective, on the other, occupied very little of the variety-of-suffragists’ attention, this privileging of the latter was intrinsic to the logic of their

⁷⁶⁶ John Locke, *A Letter Concerning Toleration*, 55. Note that this quotation appeared earlier to illustrate a different point about the moral-psychological causes of the inefficacy of persecution. This passage, while understudied relative to other parts of the *Letter*, is one of Locke’s richest and sits at the intersection of several strands of argument.

⁷⁶⁷ Pochin, *Plan*, 18; Cole, *Middle Classes*, 67.

⁷⁶⁸ This theme is echoed in contemporary descriptive representation literature which invokes a salience or relevancy criterion; see e.g. Mansbridge, “Should Blacks Represent Blacks?” 634. This criterion is an object of consternation among opponents of descriptive representation, who castigate it as a means of covertly introducing normative notions into a discussion which presents itself as empirical; see Andrew Rehfeld, *The Concept of the Constituency* (Cambridge: Cambridge University Press, 2005), 149.

position.

To state the point differently: Eugène Pelletan was contemporaneously devising a theory of electoral politics which might be summed up by the phrase, *we vote because we think*.⁷⁶⁹ By amending this phrase we can arrive at something like a formula for specifying the operation of sociologically accurate representation: *a group has seats in the Commons because it thinks differently in some relevant way*. Contributions to public opinion which could not be expected to come from another source were what furnished an “interest” with a claim for the assurance of seats on its behalf.

Yet if in excluding a wide swathe of the working classes, variety-of-suffragists were simply following the logic of descriptive representation in an age obsessed with public *opinion*, why did a large number of our authors depart from Bagehot and make provisions for their parliamentary participation? There were, I think, two reasons for this discrepancy, though they were not spelled out by the authors themselves. The first was a disagreement on the empirical front. These figures, it appears, would have denied that there was any deficit of political ideas among the rural lower class, at least with respect to their urban counterparts; that they did have such ideas seems to have been the assumption on which proposals such as Creasy’s and Stapleton’s to divide the nation into a number of equally-sized districts reserved for the working class proceeded.

More difficult, however, is the case of Harris. Given Harris’s avowal of an abstract right to vote, his enfranchisement of the entire working class did not need to involve any dispute over the facts of opinion-holding in different demographics. Thus his heterodox adherence to natural rights

⁷⁶⁹ “The political life of a people consists at once of thinking and of voting; by thought, it forms an opinion; by the vote, it records the opinion; if a people never thought, it would not have need of the vote; it is obvious that it votes only on the basis of a good or bad idea, but an idea all the same. At bottom it is thought alone which constitutes the political life of a nation”; Pelletan, *Les droits de l’homme* (Paris: Pagnerre, 1858), 127-8.

Pelletan was a great French liberal-republican, Anglophile, and opponent of the Second Empire. It was my intention to examine his thought at length in the chapter on French defenses of toleration. He had an extremely rich theory that combined a quasi-mystical, spiritualist notion of abstract right with many standard English themes. He is also important for having laid out one of the earliest full-fledged theories of parties, where these were seen not just as collections of legislators cooperating within the assembly but also as associations which structured public deliberation more generally and thereby kept groups competing within society from needing to resort to violence. In addition to *Les droits de l’homme*, this theory was laid out in *Le Droit de Parler* (Paris: Pagnerre, 1862).

dictated that “the people” not be left out while the professional, learned, landed, clerical, and commercial elements were afforded a voice. But his unconcern about any reputed deficiency of opinions among those workers not comprehended in the “town artisan” category also bespeaks his resistance to the just-described ideational turn among his variety-of-suffrage comrades – a resistance that was of a piece with his being out-of-sync with the intellectual tenor of the time more generally. While Harris worshipped at the contemporary altar of public opinion, he did not link this value up with an injunction to actually investigate the ideological condition of the country at the present moment. On the contrary, the deductive, unempirical bent of his sociology pushed him to classify the several interests according to his sense of what the essential functional parts of a society were, in a fashion that recalls a premodern notion of society’s natural orders more than just about any document from this social-scientific and inductive milieu. Just as older images of the estates of the realm gave ideological diversity no place in its system of social differentiation, but instead grounded this differentiation in natural, objective differences in the role and purpose of the estates, Harris does not seem to have thought that opinions might have any special status in the project of mapping the social.⁷⁷⁰ This mix of faith in natural rights with indifference to the intuition that it was in the last analysis something like opinion which provided the representation-relevant basis for distinguishing social groups was a second cause for a mirror theorist not to wind up in with the Bagehot-Greg stance, and it applies in some degree to Holyoake as well.

Now that we have seen how the value of the rule of public opinion could serve to vindicate a seeming incongruity between the ideals of inclusivity and representativeness and the presence of certain exclusions in some of their plans, it is worth taking note of a few of the more salient of the

⁷⁷⁰ Though I think that he presses this point with too much absoluteness, contrasting Harris with his contemporaries does bring out the kernel of truth in Rosanvallon’s point about “opinions” replacing “social estates” as the basic units of representation in the modern world; Rosanvallon, *Le peuple introuvable*, 141-3. For more on the concept of a society of orders, see ch. 5, note 1087.

normative dimensions of the conception of public opinion shared by virtually all subscribers to the mirror theory. What did the public opinion to which they devoted so much empirical and theoretical attention look like, and how did their conceptualization of it compare with other contending visions? Let us look at four features of public opinion as they envisioned it.

First, “public opinion” for the proponents of electoral diversity came with a condition of durability. The concept for them had a necessarily temporal dimension; an intellectual snapshot of the nation at a given moment – in modern politics, the result of a single “public opinion poll” – did not necessarily reveal anything deserving of the name. For they distinguished caprice or whimsy, the reaction of the people in an “excitable” moment – what Lecky called “mere fashion”⁷⁷¹ – from public opinion properly so-called. It was through its staying power that an idea proved its place as a “genuine conviction”; the country had to show itself to be “determined” or “in earnest” on a question, a view had to ratify itself as belonging to the “free and deliberate opinion of the nation,” before it attained the normative status at which a view *demande*d translation into law.⁷⁷²

This accent on durability, it ought to be said, undoubtedly had an elitist skew to it; it incorporated into the very definition of public opinion the condition that the “influential and educated portion of the numbers of the community” should have weighed in and been heard by the populace over the din of mere “demagogues” who preyed on the passions.⁷⁷³ Yet the tilt of the concept toward the “superiors [who] understand these matters”⁷⁷⁴ was, in comparison to other

⁷⁷¹ Lecky, *Democracy and Liberty*, vol. 2, 406.

⁷⁷² Lecky, *Democracy and Liberty*, vol. 2, 406; Bagehot, *English Constitution*, 268; Harris, *True Theory*, 98. For the mid-Victorian generation of writers, the paradigm instance of such a rightful conversion into policy of durable public sentiment even when it had economically and socially revolutionary implications was the repeal of the Corn Laws in 1846; see e.g. Greg “Representative Reform [2],” 271.

⁷⁷³ Greg, “Expected Reform Bill,” 214; Cole, *Middle Classes*, 80.

⁷⁷⁴ Greg, *Enigmas of Life* (London: Trübner & Co., 1872), 48. This notion was itself the persistence into the mid-Victorian era of a view of public opinion inflected by the notion of the guidance of “natural superiors” from earlier in the nineteenth-century; see e.g. J.G.A. Pocock, *Virtue, Commerce, and History*, 307.

currents of nineteenth-century thought, relatively muted.⁷⁷⁵ Moreover, although the influence of the “educated classes” was in their eyes necessary for the formation of a proper public opinion, their vision of public opinion was unspecified with regard to content. True, as mentioned earlier, members of the variety-of-suffrages stamp occasionally blanched at the implications of their theory when confronted with socialism. Yet on the whole they resisted the temptation to build into the concept of public opinion a set of “correct” substantive beliefs about politics. This forbearance from determining the content of the public opinion which they exalted stood in sharp contrast with earlier attempts to theorize public opinion, as exemplified by the liberal Tory W.A. Mackinnon’s inclusion of “proper religious feeling” as a defining element of public opinion in his path-breaking 1828 treatise *On the Rise of Public Opinion*.⁷⁷⁶ The variety-of-suffragists were concerned to differentiate “settled opinion” or “real public opinion” from the “passing clamour” stirred up by “loud agitators,”⁷⁷⁷ and to do this they invested the durability or persistence of beliefs with normative significance. But they refrained from restricting the category of public opinion to particular goals or points-of-view and accepted that the ultimate arbiter of legislative disputes was “public opinion [when it] has been finally made up.”⁷⁷⁸

If public opinion was characterized by durability, this was a consideration that applied to the short- or medium-term. In the long-term, however, theorists of electoral diversity envisaged public opinion as dynamic and shifting: “You can no more expect different generations to have exactly the same political opinions, to obey exactly the same laws, to love exactly the same institutions, than you

⁷⁷⁵ James Thompson’s observation about the relative inclusivity of Bagehot’s notion of public opinion – “he was careful not to impose overly stringent intellectual requirements on membership” in the domain of public opinion – applies to the variety-of-suffrages cohort more generally; Thompson, *British Political Culture and the Idea of Public Opinion*, 56.

⁷⁷⁶ Mackinnon, *On the Rise, Progress, and Present State of Public Opinion, in Great Britain and Other Parts of the World* (London: Saunders and Otley, 1828), e.g. 1, 5, 8. On Mackinnon personally and as an influential theorist of the rise of the middle class, see Warhman, *Imagining the Middle Class*, esp. 299-303, 359-61.

⁷⁷⁷ Grey, *Parliamentary Government*, 238; Bagehot, “Mr. Gladstone,” in *CW*, vol. 3, 438-9.

⁷⁷⁸ Grey, *Parliamentary Government*, 64.

can expect them to wear identical clothes, own identical furniture, or have identical manners.”⁷⁷⁹ To affirm the rule of public opinion was to commit to a kind of political open-endedness.⁷⁸⁰ It was to eschew finality, not only in norms and values but also in institutions – including electoral institutions. In contrast to the aim of instituting a final settlement of the franchise question often attributed to the makers of the First Reform Act,⁷⁸¹ at its mid-century height the school of electoral diversity mostly disavowed any intention to erect permanent rules for the suffrage. As the social-intellectual shape of the nation changed, electoral arrangements would need updating in order to track these changes. “Finality is a delusion;” in order to keep the parliamentary system in sync with the rise of new classes, interests, and opinions, future generations would have to carry on in “the good old track of Constitutional progress by means of Constitutional Reform.”⁷⁸² The social, economic, and intellectual progress which had rendered inadequate the unreformed system as well as the reformed one established in 1832 could be expected to continue, and thus the allowance for “safe and timely extension...at some future time” was a vital part of any reasonable outlook on reform.⁷⁸³ The variety-of-suffrages conception of the authority of public opinion thus contained in its own way more than a small dose of the old philosophic-radical search for a politics in which “the dead [do not] chain down the living.”⁷⁸⁴

A third feature will likely come as no surprise to the reader: the vision of public opinion with

⁷⁷⁹ Bagehot, “The Chances for a Long Conservative Regime in England,” 229.

⁷⁸⁰ “Bagehot’s mind was always experiencing, and always working its observation into pattern, into system, but – and here we touch on his central excellence or virtue – into a system open towards the future”; Young, *Today and Yesterday* (London: Hart-Davis, 1948), 243.

⁷⁸¹ See e.g. Southgate, *Passing of the Whigs*, 15, 306. For dissenting scholarship on the significance of finality as an end for the Whigs of 1832, see Wasson, “The Spirit of Reform,” 173; John Milton-Smith, “Earl Grey’s Cabinet and the Objects of Parliamentary Reform,” *Historical Journal*, vol. 15, no. 1 (1972), 73-4.

⁷⁸² Creasy, *Text-Book*, 63.

⁷⁸³ Pochin, *Plan*, 17.

⁷⁸⁴ Bentham, “Anarchical Fallacies,” in *The Works of Jeremy Bentham*, 11 vols., ed. John Bowring (Edinburgh: William Tait, 1838-43), vol. 2, 494.

which the mid-Victorian mirror theory operated was not an individualistic or aggregative one. Just as the units to be represented through their institutions were not *persons* but *groups* – most often classes, but also professions, memberships of corporate bodies, or ideological movements – so the public opinion which was integral to their understanding of free government or national self-determination rejected individualistic-aggregative modes of characterization. For this band of writers, to believe that the sociologically indiscriminate counting of heads produced government by public opinion was simply to mistake what public opinion *was*.⁷⁸⁵ Here, for instance, is Greg forcefully stating his dissent from individualistic premises:

For what is a *Nation*, in a highly advanced and complicated state of civilisation like ours? Not a mere aggregation of millions; not a homogeneous mass of units; but a congress of ranks and classes...having, it is true, one common real ultimate interest, but varying in their characters, occupations, and immediate aims; called to special duties, discharging separate functions, guided by peculiar tastes and desires, representing different phases of intellect and opinion, and considering questions of government and social policy from widely divergent points of view.⁷⁸⁶

What it meant that the nation ruled itself was, quite simply, analytically unrelated to the results of a process that would tabulate the views “at the top of the head” of an assortment of individuals.⁷⁸⁷

The constituent parts of the “public opinion” which it was the duty and even the definition of representative governments to render into law were, rather, *ranks, classes, characters, phases of intellect* – that is, social-ideological *facts* the existence of which transcended what one would extricate from a procedure of random sampling or sociologically unspecified suffrage.⁷⁸⁸ Or, as Lecky stated in a

⁷⁸⁵ A similar conception of public opinion persists today in John Dryzek’s “discourse” model of deliberative democracy; see Dryzek, “Legitimacy and Economy in Deliberative Democracy,” *Political Theory*, vol. 29, no. 5 (2001): 651-669. This similarity should lead us to wonder just how “democratic” Dryzek’s model of deliberation really is. See also the idea that “issues” and not just “persons” should be the object of democratic representation; Nadia Urbinati and Mark Warren, “The Concept of Representation in Contemporary Democratic Theory,” *Annual Review of Political Science*, no. 11 (2008), 397.

⁷⁸⁶ Greg, “Expected Reform Bill,” 250.

⁷⁸⁷ I take this phrase from John Zaller, *The Nature and Origins of Mass Opinion* (Cambridge: Cambridge University Press, 1992). A similar skepticism about how informative such surveys are – how genuinely the findings gleaned really constitute anything deserving of the name *opinion* – pervades much American political science.

⁷⁸⁸ Greg, “Expected Reform Bill,” 214.

more defensive way as the century closed in democratic fashion: “Every one who will look facts honestly in the face can convince himself that the public opinion of a nation is something quite different from the votes that can be extracted from all the individuals who compose it.”⁷⁸⁹ Instead, public opinion was a term that denoted a kind of intellectual geography. To discern it was akin not to the mathematical task of adding up individual expressions of belief but to the work of the cartographer; the political scientist had to map “the area of public opinion,” the surface of which was made of “the various interests and opinions of a great nation.”⁷⁹⁰ Given that public opinion was an entity of a different order than doing sums of individual statements of opinion, the electoral system which would realize its sway over parliament placed no intrinsic value on – and could only incidentally approach – one which sought to translate into the assembly the personal desires of the citizenry considered in an undifferentiated manner.

This anti-aggregative picture of public opinion was hardly unique to the descriptive tradition that has occupied us here. A range of schools of thought with diverging political orientations espoused a version of it – including majoritarian democrats who often conceived of the local geographical constituency as an integral community of opinion,⁷⁹¹ as well as some proponents of the “individualistic” method of STV.⁷⁹² For example, one can find in Victorian positivism – that exotic attempt to plant Auguste Comte’s philosophy in the incompatible soil of English liberalism which was very far removed in nearly every way from the political sensibilities of the mirroring camps – disavowals of individualistic ideas of public opinion that exceeded in forcefulness any expressions in

⁷⁸⁹ Lecky, *Democracy and Liberty*, vol. 1, 21.

⁷⁹⁰ *Ibid.*, 21.

⁷⁹¹ See e.g. Colin Tyler, *Idealist Political Philosophy* (London: Continuum International Publishing, 2006), 70.

⁷⁹² The perplexities associated with Victorian PR’s ambivalent relationship to a communal notion of public opinion are addressed in chapter six.

Lecky's corpus.⁷⁹³ What separated Mackintoshian mirror theorists' conception of the public opinion that ruled the country from that of Comtean radicals was not its organicist or collectivist dimension, but another factor altogether.

What distinguished these two approaches to public opinion was, rather, a fourth feature, one which has been present throughout the whole chapter: diversity. To Comteans like Frederic Harrison, the "controlling power of opinion – the corner-stone, that is to be, of all rational government" was comprised of two parts: the moral energy of the working class to set the ends of politics and the leadership of strong and expert executive authority to devise and enforce the means.⁷⁹⁴ The latter element was, moreover, not an equal partner. It was a concession to the complexity of social problems – since the working class were "not capable as a body of efficient administration of affairs," they were in practice restrained "not to rule but to supply the motive to rule."⁷⁹⁵ But when it came to the "choice" of leaders and the determination of "results" to be pursued, Harrison granted this solely to the working class, because, in a manner similar to Marx, "the working class is the only class which (to use a paradox) is not a class. It is the nation. They represent, so to speak, the body politic as a whole."⁷⁹⁶ This was entirely opposed to the embrace of sociological complexity which, as we have seen, marked the proponent of electoral variety. Given that the society which they strove to represent was a complex, multi-part organism, the opinion that

⁷⁹³ See e.g. the words of Frederic Harrison: "public opinion abhors this fatal mathematical equality, this absurd multiplication of ciphers"; "The Revival of Authority," *Fortnightly Review*, vol. 13, no. 73, (Jan. 1873), 18. See also his distinction between "the *independent* opinion of individual voters" and "the *organic* opinion of masses"; *Order and Progress* (London: Longmans, Green, and Co., 1875), 98.

⁷⁹⁴ Harrison, *Order and Progress*, 147-52, 231-2.

⁷⁹⁵ *Ibid.*, 230-1.

⁷⁹⁶ *Ibid.*, 151. While this tenet of Harrison's positivism obviously appealed to the rising ranks of English socialists, we should avoid the assumption that it characterized the full socialist spectrum. Ramsay MacDonald, for instance, saw the relationship between representation and diversity in a way that was continuous with much of the variety-of-suffrages tradition, as did many elements of the labour movement in the last third of the century. See MacDonald, *Socialism and Government*, 2 vols. (London: Independent Labour Party, 1909), esp. vol. 1, ch. 2; A.W. Humphrey, *A History of Labour Representation* (London: Constable and Co., 1912), *passim*.

arose to guide its politics would necessarily include several streams of thought; if, in the words of their Christian socialist contemporary F.D. Maurice, the “sign of what this age is” was above all a profound appreciation of the “medley of parties and influences” and an “evident consciousness in each of any two contending parties that its own conclusions and position are not entirely satisfactory,”⁷⁹⁷ then the variety-of-suffragists had as strong a claim as any political movement to be exemplary of their epoch. Public opinion was in their eyes a diverse, composite phenomenon: “it is natural” that men “will habitually differ; [that] great national questions will divide the nation; [that] great parties will be formed.”⁷⁹⁸ The consensus, or rather series of consensuses, which emerged to claim the mantle of public opinion had the nature not of a projection of a single set of ideals or interests – this was, the variety-of-suffragists agreed with Mill, the mark of stagnant or Asiatic societies⁷⁹⁹ – but of an assemblage of partial truths.⁸⁰⁰ That the government should run in accord with the ideas which gained favor after subjection to criticism, amendment, supplement from this chorus of perspectives was the message which they intended to convey by signing onto the watchword of the rule of public opinion.

Distilled from all of this diversity was what was variously called by such phrases as a “determination of public opinion” or a “resolution of the national mind,” and it was these determinations and resolutions which were ultimately to set the direction of national policy if Britain

⁷⁹⁷ Maurice, *The Workman and the Franchise*, 187.

⁷⁹⁸ Bagehot, “History of the Unreformed Parliament,” 273.

⁷⁹⁹ On Bagehot, Mill, and the fear of “the awful, rock-like immobility of most of human society,” see Burrow, *Whigs and Liberals*, 108-10; Georgios Varouxakis, *Victorian Political Thought on France and the French* (Houndmills, Basingstoke: Palgrave, 2002), 118.

⁸⁰⁰ The emphasis on public opinion as a split, polyphonic agglomeration of different strands competing and coalescing can be contrasted not only with the Comtean position but also with an older view of public opinion. This view, characteristic of the eighteenth century, took public opinion to be a kind of monolithic constraint on the freedom of action of potentially maleficent rulers; see e.g. Joseph Priestley’s, “The Stability of Governments,” in *Priestley’s Writings on Philosophy, Science, and Politics*, ed. John Passmore (New York: Collier Books, 1965), 189: “The sense of the people, as we call it, though no nominal part of the constitution, is often felt to be a real check upon public measures by whomsoever they are conducted; and though it is only expressed by talking, writing, and petitioning, yet tumults and insurrections so often arise when the voice of the people is loud, that the most arbitrary governments dread the effects of them.”

was to consider itself free. But was there good reason to believe that from this forge of diversity came good policy?

This question was answered by a third value of the variety-of-suffrages tradition: deliberation. Deliberation has, as we will see, a strong claim to be considered the normative heart of their theory – and it was the locus of much critical reaction from their contemporaries.

3) Deliberation

This value and the foregoing one were linked by the dual role that public opinion played in the mirror theory. On the one hand, public opinion was the object of representation: its accurate reflection was the end or outcome of the electoral machinery which they sought to implement. On the other hand, however, it was the means – the material cause, if you will – of another aspect of the legislative process: the deliberation which took place in the Commons. Public opinion in its polyphony was, to variety-of-suffragist eyes, the resource or subject-matter of parliamentary discussion. It was the stuff of which “government by discussion,” to use the ubiquitous Victorian phrase, was made.

As a result of the bipartite place that it occupied, the misrepresentation of public opinion caused a two-fold wrong. First, misrepresentation meant that certain strands of public opinion were excluded (or given fewer seats than they deserved), which was a miscarriage of justice to the groups involved; they ought to have been present, or been present in a certain magnitude, but were not. Their conceptualization of this wrong was the subject of section (1). If this was the wrong as seen from the strictly *descriptivist* standpoint, it took on a different dimension when seen in the *deliberativist* light. From this perspective, the mistranslation of public opinion rendered deliberation *partial* and therefore rendered it a less reliable bearer of the benefits expected from it. To employ a term which has appeared throughout this chapter, this partiality created a “class Parliament” in one direction or

another;⁸⁰¹ hence the repeated condemnations of class rule expressed not only a defect of *representativeness* but a defect of *deliberativeness* as well. To allege that an assembly had succumbed to the dominance of a class was to call it both unrepresentative *and* undeliberative.

This was not, to mid-century champions of electoral diversity, a simply conceptual point about what followed theoretically from the dual status which they assigned to public opinion. Instead, it was a point the practical explanations for which and the real-world manifestations of which obsessed them. What they meant by the problem of the partial Commons was tantamount to an earlier, broader version of what is now known as the “diversity trumps ability theorem.”⁸⁰² We might call it, for the purposes of this chapter, the “diversity trumps character” postulate, to better reflect the blend of intellectual capacities and moral dispositions on which Victorians focused in describing their exemplary legislator.

To take Bagehot as an illustration: the editor of the *Economist* made the “moderate” MP a central character in the success story that was English parliamentary history. Only if “the overwhelming majority of representatives are men essentially moderate” was it possible to maintain parliamentary government; “intrinsically moderate, careful, and almost shrinking men” were the best suited for legislative positions.⁸⁰³ Bagehot was thus anything but agnostic about the kind of temperament most appropriate for assemblyman. And yet, despite his profound interest in the character traits appropriate to MPs, he was clear about the insufficiency of fulfillment of this moral-dispositional criterion for the creation of an epistemically robust legislature.

⁸⁰¹ Cowling, *1867: Disraeli, Gladstone, and Revolution* (Cambridge: Cambridge University Press, 1967), 40.

⁸⁰² See e.g. Scott Page, *The Difference: How the Power of Diversity Creates Better Groups, Firms, Schools, and Societies* (Princeton: Princeton University Press, 2007).

⁸⁰³ Bagehot, *English Constitution*, 299, 297. It was the lack of this quality that had caused the French – an “overexcitable population” addicted to “grand principle[s]” and thus unable to respond pragmatically to social problems as they arose – to prove so inept at operating parliamentary institutions and to repeatedly succumb to authoritarianism; Bagehot, “Letters on the French Coup d’État of 1851,” 60-1. For more on this facet of England’s negative perception of the French, see Varouxakis, *Victorian Political Thought on France*, e.g. 84-5, 89-90.

No mechanism of appointing legislators solely on the bases of their personal characteristics, even if it ensured that all 658 members were models of moderation, was preferable to a properly mirroring electoral system that brought within it all relevant information and perspectives. For Bagehot, moderation without the diversity that came with descriptive representativeness would mean that, despite the best intentions of MPs, it would be impossible for them to govern with the wisdom that could only come from including the full range of relevant groups; they would lack the “materials” for “a judgment” that could embrace public opinion in its many facets.⁸⁰⁴ The “diffused multitude of moderate men” were “just as likely to be tyrannical towards what they do not realise, inapprehensive of what is not argued out, thoughtless of what is not brought before them, as any other class can be,” and consequently it was “of the utmost importance that there should be in the House of Commons some persons able to speak...the wants, sentiments, and opinions of every section of the community.”⁸⁰⁵ In other words, a moderate assembly could still be a “stubbornly stupid” one if it was rendered unable to respond to public opinion due to the absence of a suitable diversity among its members.⁸⁰⁶ There was no substitute at the level of individual MPs’ personal attributes for the realization of multi-faceted public opinion at the level of the composition of the collective.

The theme of “diversity trumping character” was echoed in various ways by authors sympathetic to the project of differentiated franchises. Pochin stated it in unadorned fashion with respect to the gains he saw from earmarking seats for the urban working-class: “the information thus obtained would be of great service to the country, both as affording an opportunity for

⁸⁰⁴ Bagehot, “Parliamentary Reform,” 195.

⁸⁰⁵ Ibid., 195.

⁸⁰⁶ Ibid., 195. And see the similar sentiment expressed by the Liberal MP Edward Buxton in his essay “The Liberal Dilemma,” quoted in Saunders, *Democracy and the Vote*, 168.

conviction by argument...and also as affording reliable data for future legislation.”⁸⁰⁷ Without working-class input in the Commons, decisions made by even the most enlightened and best-intentioned membership would suffer, for they would lack the attitudes and attributes which only the working class could provide. To this school of thought there was no ersatz for the expression and advocacy of group preferences and perspectives by those who belonged to the group; these figures flatly denied the possibility of achieving (at least among a critical mass of practical politicians) the Millian ideal of a person so undogmatic and open-minded that he would be able to understand and state the position of his opponents even better than they could themselves.⁸⁰⁸ Consequently even the most “patriotic” and “noble race of men,” if in full possession of the assembly, would produce “class legislation”; the only true antidote to this ill was to allot to all fundamental interests a “sufficient force to carry weight and authority into deliberation.”⁸⁰⁹ Not the character of the politicians, but the presence of “representatives of [each] class,” gave security against parliament’s instigation of “class evils.”⁸¹⁰ Only if a parliamentary inlet for the “beliefs” of the “organic portion of the working classes” were found, wrote Maurice, could the nature of social and political problems be “thoroughly and satisfactorily expressed”:

A whole set of questions which are now most imperfectly handled in the House of Commons – handled by men looking at them from a distance – seeing them from their own points of view – unable to sympathize with labourers if they wish it ever so much – would then be submitted to fair and reasonable discussion.⁸¹¹

⁸⁰⁷ Pochin, *Plan*, 18.

⁸⁰⁸ “The hardest assertor, therefore, of the freedom of private judgment—the keenest detector of the errors of his predecessors, and of the inaccuracies of current modes of thought—is the very person who most needs to fortify the weak side of his own intellect, by study of the opinions of mankind in all ages and nations, and of the speculations of philosophers of the modes of thought most opposite to his own....A man of clear ideas errs grievously if he imagines that whatever is seen confusedly does not exist: it belongs to him, when he meets with such a thing, to dispel the mist, and fix the outlines of the vague form which is looming through it”; Mill, “Bentham,” in *CW*, vol. 10, 91.

⁸⁰⁹ Cracroft, *Essays*, vol. 1, 27-8.

⁸¹⁰ *Ibid.*, 27.

⁸¹¹ Maurice, *The Workman and the Franchise*, 233.

As one would expect given their classification of democracy as a form of class rule, variety-of-suffragists believed that legislatures suffered deliberative deficits not only when the lower classes went without *sufficient weight and authority* to make their wants and reasons heard, but when higher and more powerful classes were unduly marginalized as well; the perception that this marginalization was occurring with regard to the commercial ranks of the great cities was, as we glimpsed earlier, the source of Cole's dissatisfaction with the *status quo*.⁸¹² Sidgwick, whom we will see in the next chapter combining sympathy with the aims of the variety-of-suffrages model and an impression of its untenability in the face of democratic counterarguments, gave a cogent recapitulation of this line of thought in his *Elements of Politics*. Unless the "various elements of the community" were directly represented through an "adequate selection of persons who...combine special experience in different departments of social life," the "assembly" would be liable to lack both a "keen *concern* for the interests" of all parts of society and a wide enough "knowledge" for "dealing in a statesmanlike manner with all the problems presented to a modern legislative body."⁸¹³ Given "men as they are," it was not possible for an assembly to approximate wisdom – to "possess such knowledge as is obtainable of the general tendencies of social development and the effects of different social causes" – other than through a measure of variety in membership.⁸¹⁴

The perceptive reader will have noted that in this sensitivity about the harm threatened to legislation by the absence or minimization of important strands of interest and opinion were blended two separable worries. The first is the more humdrum one encapsulated by the adage "out of sight, out of mind" – that the welfare of those classes who were without parliamentary sway would be neglected; this was what Holyoake had in mind when he castigated the reformed Commons as a

⁸¹² Citizens of "great commercial importance, wealth, and tax contributions," "bankers, merchants, professional men and traders" lacked suitable representation for their "political views, feelings, and opinions"; there was a dearth of MPs "who can speak authoritatively the opinions of the important classes"; Cole, *Middle Classes*, 39.

⁸¹³ Sidgwick, *Elements of Politics*, 371.

⁸¹⁴ *Ibid.*, 371.

“Rich Man’s Club” that paid attention to little but the “views and comforts of the ‘upper ten thousand.’”⁸¹⁵ Yet this was the less fundamental strain of their criticism. For it was liable to the simple counter that, however it may look to those who wished for different policies to be pursued, the current members were concerned with and looking after the well-being of *all* classes.⁸¹⁶ Instead, the foundation of their picture of the policymaking costs incurred by unrepresentativeness was that unrepresentativeness *could not but* impoverish the discussion by which measures were enacted and majorities were formed, and therefore *could not but* have a general tendency to yield worse lawmaking. If parliament were to be dominated by only one or a few social types, then the truths conveyed by the excluded groups would not bear on the legislative agenda.

The essence of the variety-of-suffrages rendition of “diversity trumps character” amounted, then, to the warning that there were no workarounds for the harms resulting from partial deliberation, that the deliberative deficit resulting from inadequate representative machinery could not be made up for by maximizing the enlightenment or moderation of the personnel. This warning was, in turn, entirely of a piece with the observations about the one-sidedness, partiality, and fallibility of the human mind which (as shown in part one) figured so largely in the theory of intellectual liberty and the tolerant society; it was the lesson of (in one liberal Anglican theologian’s words) “the one-sided imperfectness” and “limited...perception” of the individual at work on the parliamentary plane.⁸¹⁷ This was *On Liberty* for legislatures: it was that text’s insight about the perniciousness of assuming one’s infallibility related to the composition of assemblies. Mill himself recognized this congruence. His manner of articulating the connection is striking enough to warrant being quoted at length:

⁸¹⁵ Holyoake, *Liberal Situation*, 17.

⁸¹⁶ See e.g. the Tory poet William Edmonstoune Aytoun’s “Reform Measures of 1852,” *Blackwood’s Edinburgh Magazine*, vol. 71, no. 437 (Mar. 1852): 369-86, esp. 371; Austin, *Plea for the Constitution*, 10.

⁸¹⁷ S.R. Bosanquet, *Eirenicon* (London: Hatchard & Co., 1867), 50, 17.

Sir, there is a better way of persuading possessors of power to give up a part of it: not by telling them that they make a bad use of their power—which, if it were true, they could not be expected to be aware of—but by reminding them of what they are aware of—their own fallibility. Sir, we all of us know that we hold many erroneous opinions, but we do not know which of our opinions these are, for if we did, they would not be our opinions. Therefore, reflecting men take precautions beforehand against their own errors, without waiting till they and all other people are agreed about the particular instances; and if there are things which, from their mental habits or their position in life, are in danger of escaping their notice, they are glad to associate themselves with others of different habits and positions which very fact peculiarly qualifies them to see the precise things which they themselves do not see. Believing the House to be composed of reasonable men, this is what we ask them to do. Every class knows some things not so well known to other people, and every class has interests more or less special to itself, and for which no protection is so effectual as its own.... Is there, I wonder, a single member of this House who thoroughly knows the working men's views of trades unions, or of strikes, and could bring these subjects before the House in a manner satisfactory to working men?...What is asked is a sufficient representation to ensure that their opinions are fairly placed before the House, and are met by real arguments, addressed to their own reason, by people who can enter into their way of looking at the subjects in which they are concerned....[At present, if MPs] condescend to argue [with working-class voices], it is from premises which hardly any working man would admit; they expect that the things which appear self-evident to them will appear self-evident to the working classes; their arguments never reach the mark, never come near what a working man has in his mind, because they do not know what is in his mind. Consequently, when the questions which are near the hearts of the working men are talked about in this House—there is no want of good will to them, I cheerfully admit—but all that it is most necessary to prove to them is taken for granted.⁸¹⁸

This drawing of the link between the fallibility of the human mind and the urgency of institutions which would secure to each class its own representatives occurred, it should be said, in a speech in favor of Gladstone's quite un-variety-of-suffrage-like 1866 reform proposal, and of course Mill's idea of a proper system of representation was PR and not a plan for revived electoral variegation. But as far as rooting the need for every class to possess its own parliamentary spokesman in a psychology of limitation, closedness, and one-sidedness, and of thereby charting the route from the deliberative partiality of the Commons to the deterioration of its legislation, there was hardly any daylight between Mill and this chapter's reformers. This dark psychology of opinion, and the aspiration to overcome it through the norms and institutions of a deliberative society, were, after all, not peculiar to Mill, so we should not be shocked to see its lessons carried out at the level of parliament by a slate of reformers that included Bagehot, Lecky, and Holyoake, all of whom made

⁸¹⁸ Mill, Speech on the Representation of the People [2], 13 Apr. 1866, in *CW*, vol. 28, 64-5.

much of these themes of fallibility and the consequent necessity of diversity throughout their political theory.

Hence it was as natural for Lecky as for Mill to describe the epistemic impairment that would afflict the Commons in a democratic situation in which only the candidate who could make “appeals to [lower] class interests or class animosities” in terms of the consequence that there would be no influence for “conditions of thought and life widely different from their own.”⁸¹⁹ Hence Bagehot defined “true Liberalism” in a way eminently germane to the *Considerations on Representative Government* as holding up “the true ideal of Parliament [which] is to have the largest number of really organic interests and ideas meeting together in the representative assembly, *to try each other’s strengths and weaknesses*.”⁸²⁰ Just as, per the analysis in chapter two, it was a hallmark of “genuine Liberalism” in the public sphere to recognize “that a willingness to hear every side of every question is the condition...of vigorous faith,”⁸²¹ so it was a hallmark of liberalism in the parliamentary sphere that “discussion at least among all possible views and interests *before [legislative] decision* be...part of the system.”⁸²² If toleration and a free press were prerequisites for the individual to have justified confidence in his beliefs, by parallel reasoning there could be no justified confidence in the quality of legislation passed through parliament if voices which contributed to public opinion systematically risked not being “heard at all” in the assembly.⁸²³ Public opinion was reliably bigger and more expansive, more fully incorporative of the variety of “consolidated feelings and matured opinions”

⁸¹⁹ Lecky, *Democracy and Liberty*, vol. 1, 369.

⁸²⁰ Bagehot, “‘True Liberalism’ and Reform,” 360, my italics.

⁸²¹ Leslie Stephen, “Social Macadamisation,” 165.

⁸²² Bagehot, “‘True Liberalism’ and Reform,” 360.

⁸²³ *Ibid.*, 360.

in which inhered those partial truths of which good legislation had to take account,⁸²⁴ than the mind of any one kind of person or the predilections of any one class could be. The reflection of public opinion was, accordingly, the indispensable bedrock of a truly deliberative Commons.

Once the dictate to realize public opinion in full was met, then the logic of the epistemic defense of toleration kicked in with respect to the Commons's direction of policy; as Cole put it, in response to an imagined objection of a reader anxious about the increase in "differences of opinion" that his scheme would cause in the Commons: "when discussion is free, the best arguments will prevail in the end, and the country at large derive advantage."⁸²⁵ As an anonymous mirror theorist had written in defense of the unreformed parliament: in a "fair field of debate" for the "free expression" of all relevant sentiments, such as was provided by an assembly in which the member from one class or interest had to "be content to take his seat by the side of" members from other groups, the "truth" could not but "command [the House's] assent."⁸²⁶ If modern societies were arenas for the playing out of what I called in part one of the dissertation a "practical theodicy" with respect to the evolution of beliefs, their assemblies were not exceptions to this optimism but settings in which it was borne out.

But surely the dynamics in parliament were different from those in society at-large. Even if one could expect the truth to conquer in the public sphere over the long-run as views were criticized, refined, and adjusted in light of new arguments and discoveries, this did not mean that laws were passed because they proved themselves to be objectively productive of the greatest public good. Were there not passions and pathologies peculiar to assemblies, incentives of party loyalty, personal advantage, etc. among members which clouded the consideration of arguments on their

⁸²⁴ Greg, "Expected Reform Bill," 233.

⁸²⁵ Pochin, *Middle Classes*, 67.

⁸²⁶ *Observations on the British Constitution*, 39, 42.

own terms? Did the variety-of-suffrages crew simply skirt these questions by stipulating that whatever legislation a properly constituted assembly approved was by definition the optimal one?⁸²⁷ Why wasn't the legislature the exception to this progressive rule?

Before delving into the specifics of their answer to these questions, it ought to be stressed that the rosy picture painted of the epistemic properties of a diverse Commons applied only when their properly representative Commons was realized, or at least approximated. If corruption, whether of the "plutocratic" genre sketched in the previous chapter or of an older kind of monarchical patronage with which early-nineteenth-century Whigs were preoccupied,⁸²⁸ were prevalent, then parliamentary deliberation would be hollow, since members would be responding not to public reasons but to private interests. And, as we have seen, if the electoral regulations invested one class with such an overwhelming preponderance that their will could be imposed without needing to answer to reasons not their own, lawmaking would tend to be hasty and sectarian rather than public and enlightened. All of their optimistic assurances about the quality of policy were predicated on avoiding these fates.

If these obstacles were surmounted, as our authors assumed they would be were their schemes to be implemented, then the Commons would constitute an authentically deliberative site. Yet overcoming these massive structural barriers still left the more mundane problem of selfishness or class-interestedness among MPs. Even if "the truth will, in the long run, pierce all the mists raised by the intrigues of the jobber, or the violence of the partisan,"⁸²⁹ it was not clear how this overarching belief in the conquering power of truth applied to decisions on specific bills by a body

⁸²⁷ Another way of framing the question is to ask, were their paeans to parliamentary wisdom committing the kind of "survival" fallacy that Frederick Schauer has associated with certain facile versions of the epistemic argument for free speech?; see Schauer, *Free Speech*, 20-2.

⁸²⁸ For more on the former, see Bagehot, "John Stuart Mill upon the Increase of Corruption," in *CW*, vol. 6, 347-50. On the latter, see e.g. Brougham, "Parliamentary Reform," in *Contributions to the Edinburgh Review by Henry Lord Brougham*, 2 vols., (London: R. Griffin, 1856), vol. 2, 347-383; Mackintosh, "Parliamentary Reform," 483.

⁸²⁹ Brougham, "French Parties and Politics," *Edinburgh Review*, vol. 61, no. 123 (Apr. 1835), 216.

of folks devoted to the advancement of particular interests and ideologies. What about the fact that members sitting for the landed agricultural interest were unlikely to examine disinterestedly and in conformity to a proper “ethics of belief” a bill on the indemnification of cattle who died of disease?⁸³⁰ Could dissenters and Catholics be relied on to take a public-spirited view on issues of Anglican Church reform?

It is indisputable, I think, that a progressivism about the emergence of truth and the march of mind inflected even their more “scientific” attempts at analysis of parliamentary deliberation. Without doubt mirror theorists imported the broader convictions that “one error counteracts or neutralizes another” and that the “variety of our beliefs” was generative of epistemic advance from other domains of thought into the Commons without a full argument spelling out why these wider conclusions applied here.⁸³¹ Nonetheless they were far from uninterested in the empirics of deliberation in the legislative forum, and they crafted models of how the Commons could deliver on its promise as a deliberative space that did not depend on a naïve view of all MPs as impartial deliberators motivated solely by the demands of reason.⁸³²

For one thing, theirs was not an image of legislative deliberation as foolproof. If despite their general progressivism they admitted that there was “no sort of infallibility about the court” of public discourse,⁸³³ they allowed an even greater margin of error to the court of MPs, operating under the host of pressures and constraints that attended the politician’s life. But they remained confident that assemblies constructed as they wished would attain the good of reasonable and deliberation-

⁸³⁰ This was an issue which particularly exercised Mill. His first two speeches in the Commons were devoted to opposing “The Cattle Diseases Bill”; see *CW*, vol. 28, 46-52.

⁸³¹ Edward Adolphus Seymour, Duke of Somerset, *Christian Theology and Modern Skepticism* (London: James Bain, 1872), 163.

⁸³² Deliberative democrats are making a belated effort to start giving a similarly “systematic” account of the whole economy of deliberation; see Jane Mansbridge, James Bohman, Simone Chambers, Thomas Christiano, Archon Fung, John Parkinson, Dennis Thompson, and Mark Warren, “A Systemic Approach to Deliberative Democracy,” in *Deliberative Systems*, eds. Parkinson and Mansbridge (Cambridge: Cambridge University Press, 2012), 1-26.

⁸³³ Bagehot, “Metaphysical Basis,” 61.

responsive legislation more often than on any other alternative. This confidence derived from the belief that if the manifold of classes and ideologies were present in the assembly, then in most debates one could count on there being a set of MPs whose stance would not be determined by their selfish interests or bedrock ideological commitments bearing on the question. This crop, supplemented by those members whose natural love of the common good outweighed the tug of personal or class gains, would have no reason to be unreceptive to argument or to decide the question on grounds other than the respective strength of the cases presented. Given the existence of this undetermined clutch of members, even the biases of self-interested or prejudiced members could work to good effect insofar as these interests and prejudices motivated them to state the case for their positions in the strongest possible terms, to leave no stone unturned in their support.⁸³⁴ Adamancy or heatedness in error could therefore serve the end of wise construction of laws in promoting the *comprehensiveness* of deliberation.⁸³⁵ The presence of fervent champions on all sides of an issue, including the incorrect ones, was essential to the process of crafting policy that would serve the public good, since it meant that no trenchant objection or salutary amendment would be overlooked – and since, *contra* Guizot, the variety-of-suffragist held that one learned which opinions partook of justice and reason only after evaluating how they fared in the trial of government by discussion. So long as their (admittedly stringent) requirements for the composition of the Commons were satisfied, then what was true of the general “struggle to discover truth” – namely, that “if a man plays his part manfully and honourably in such a struggle, he deserves our gratitude,

⁸³⁴ This is in a sense a version of familiar thoughts about the “necessity of error” applied to parliament; see e.g. C.L. Ten, “The Liberal Theory of the Open Society,” 144.

⁸³⁵ Montalembert highlighted the deliberative emptiness of legislative life in an age of electoral domination by Emperor Napoleon’s official candidates by hailing England as having already reached the comprehensiveness in parliamentary deliberation that the variety-of-suffragist reformers were hoping could be attained by their schemes. Parliament was “the great council of a great people, where all the passions and all the prejudices have a right to sit and to vote, but where their inevitable danger encounters as counterweights and remedies all the forces, all the enlightenment, and all the independence that this virile and prudent race contains within it. Even now all real needs have found a free manifestation there; all serious interests have been sagely pondered there. No other form of government has given to man more chances to encounter the just and the reasonable, more facilities for avoiding and repairing error”; *L’avenir politique de l’Angleterre*, fifth edition (Paris: Didier et Cie, 1857), 134-5.

even if he takes the wrong side,” for “our antagonists” were doubling, from a higher point-of-view, as “our co-operators”⁸³⁶ – was true as well of the pursuit of good legislation.

In short, without having ideal deliberators, something approximating an “ideal legislative speech situation” with respect to the quality of deliberation and the goodness of policy was, the variety-of-suffragists believed, nevertheless practicable. Of course, there could be no guarantee that this disinterested, reason-guided core would always be in a position to tip the scales. But given the multifaceted character of society and public opinion which they sought to represent, they believed that with some regularity it would be; when this degree was not being obtained, that was a sign that the electoral system was failing in its representative dimension and that a further installment of reform was needed. (For instance, this was the situation which Mackintosh’s thought-experiment about Catholic Irish democracy, cited in the previous chapter, was meant to illustrate.) Put differently, the Commons could fulfill its function as a “mediator” among the “wide variety of social ‘interests’” only if it contained a group of persuadable members, and the school of electoral diversity believed its programs were effective means to keep such a group there.⁸³⁷

This explanation of why better representation would counter the “many errors in legislation” which were traceable to “defective representation” received an assortment of expressions from different authors.⁸³⁸ What united them was their attempt to give a sense that the healthy representative assembly was a space in which a kind of epistemic division of labor was operative, that the process in which they placed so much faith in their apologies for diversity and justifications of toleration in society at-large did not have to stop at the doors of the Commons. In the economy of giving reasons relevant to legislation, MPs of different kinds would do different jobs: those of

⁸³⁶ Leslie Stephen, “The Morality of Competition,” in *Social Rights and Duties*, 2 vols. (London: Swan Sonnenschein & Co., 1896), vol. 1, 161.

⁸³⁷ Angus Hawkins, “‘Parliamentary Government’ and Victorian Political Parties, c. 1830-1880,” 650.

⁸³⁸ Harris, *True Theory*, 41-2.

attacking, defending, moderating, combining different insights, and of settling the final decision.

Unsurprisingly, perhaps the most vivid articulation of this intra-Commons differentiation of deliberative tasks came from Bagehot. Bagehot carried over his model of “quasi-judges” and “a sort of advocates” as the two kinds of players in “the process by which truth wins in discussion” in the public sphere into the parliamentary arena – indeed, given the dates of composition of the pertinent writings and Bagehot’s lifelong attentiveness to parliamentary affairs, it is more likely that this figuration of different epistemic functions originated within the legislative context.⁸³⁹ More than the legislative success of the Commons being grasped as a microcosmic version of the larger processes that allowed truth to emerge in society, for Bagehot the intellectual fruitfulness of the public sphere was to be understood through the analogy to an expanded Commons.

Bagehot thought that his proposed reforms would enable an appropriate distribution of seats between “class advocates,” unyielding “delegates” of the major idiosyncratic “wants, sentiments, and opinions of every section of the community,” and “unbiassed judges” who were not predetermined by “class prejudice or class interest.”⁸⁴⁰ This latter group served as the “critical and impartial audience” which could evaluate the solidness of the claims advanced by “every class and every class interest.”⁸⁴¹ “Argument in the legislature” was enlightening because “those representatives” who on a given issue assumed “the character of advocates” for “particular opinions and interests” and “singular wants and notions” were incomparable from the perspective of generating reasons, expressing wishes, suggesting goals for policy (and, conversely, of generating objections and

⁸³⁹ Bagehot, “Metaphysical Basis,” 223. In this Bagehot was giving in to what has proven to be a very strong temptation to political theory across the ages, namely, the temptation to cast public deliberation of all sorts in a judicial mold. For more on Bagehot’s distinction between moderate judges and committed advocates in the Commons, see Norman St. John-Stevan, “The Political Genius of Walter Bagehot,” 73-4.

⁸⁴⁰ Bagehot, “Parliamentary Reform,” *The Works and Life of Walter Bagehot*, Mrs. Russell Barington, 176; “Parliamentary Reform,” 195.

⁸⁴¹ Bagehot, “Present Aspects,” 252.

rebuttals to opposing suggestions⁸⁴²), while the “neutral and judicial” members were capable of evaluating with dispassion the merits of all these ideas: they were competent to “weigh their arguments, estimate their often conflicting assertions, and in the last resort decide.”⁸⁴³ With the posts of “judge” and “commissioned advocate” satisfactorily filled, there occurred a kind of chemical transformation of the nature of the opinions involved.⁸⁴⁴ Once “due voice” was given to the heap of “special type[s] of thought” from the “shipowner” and the “manufacturer” to the “landlord” and the “clergy,” once every “eccentric idiosyncrasy,” “characteristic creed,” and class bias had made itself heard, a verdict emerged which was both “purged of class prejudices” and which encapsulated the best that “ordinary intelligence” could make of the matter.⁸⁴⁵ This quasi-“judicial” model of deliberation in representative assemblies – in which “various members [who] ought to represent the various special interests, special opinions, special prejudices, to be found in the community” brought the cases, and a “neutral body of no sect” approximating the “general average intelligence” of the country passed the judgments⁸⁴⁶ – was the soundest possible engine for accumulating the full span of views in society and turning this sum into reasonable, impartial decisions about policy.⁸⁴⁷ As one

⁸⁴² “It is the advantage of constitutional government that the less one party in the state sees any part of the truth, the more their opponents look at it – the more, too, they speak of it”; *ibid.*, 258.

Bagehot was using the term “party” here in such a way that it comprehended both political parties in the narrow sense and broader groups of likeminded politicians. As a result we can see his thought as a bridge between a traditional notion of the epistemic value of diversity and a more modern view of deliberative politics in which parties are the dominant forces for ensuring contestation of ideas. In the completed version of the project, I plan to address this positive conception of parties as deliberative agents in the chapter on the “moral” debate over PR.

⁸⁴³ Bagehot, “Parliamentary Reform, 195; “Oxford and Mr. Gladstone,” in *CW*, vol. 3, 442.

⁸⁴⁴ Bagehot, “Oxford and Mr. Gladstone,” 442.

⁸⁴⁵ Bagehot, “Present Aspects,” 252.

⁸⁴⁶ Bagehot, *English Constitution*, 219-20.

⁸⁴⁷ To use a term from Melissa Williams’s helpful categorization of different notions of impartiality, the proponents of a variegated suffrage conceived of impartiality as “inclusiveness of issues”; Melissa Williams, “The Uneasy Alliance of Group Representation and Deliberative Democracy,” in *Citizenship in Diverse Societies*, 129-31. As these chapters show, a few of her other categories – “impartiality as absence of bias: participants” and “impartiality as inclusiveness: persons” – were decisively rejected by this school. The latter principle, however, was accepted by anti-proportionalist democrats and PR supporters, although these two schools differed over its implications.

Liberal MP summed up pithily, in a statement in which one could glimpse both the point about diversity in membership ensuring comprehensiveness in deliberation and the point about different members occupying different roles with regard to the setting of policy: “This is the use of a Parliament. We educate each other. All knowledge is brought to account....Even prejudice has a certain use in checking excess in another direction. The decision is taken in the main by a number of shrewd and silent judges, whose ears are ever open and minds are ever at work.”⁸⁴⁸ Because of this division of deliberative labor, properly representative assemblies could be expected to perform to a high epistemic standard: to obtain the best policy that “ordinary intelligence *minus* class prejudices” could offer.⁸⁴⁹

The confidence in the division of epistemic labor among MPs was articulated in different ways by different authors in this camp. As one would expect from a group which comprehended so much variation in sociological analysis, the details of their pictures of the economy of parliamentary deliberation varied across writers; they were not in perfect accord about how to describe the roles fulfilled by different sorts of MPs or about which kind and proportion of MPs played certain parts. For Bagehot, for example, while members of the several groups would find themselves occupying the roles of advocate and judge on different occasions, to a large extent the neutral, judgment-passing “average intelligence” would be supplied by members from the “small boroughs” who on the whole possessed “less definite character” and “characteristic prejudice” than members hailing from constituencies more closely marked by class or by the “special dialect of any bit of England.”⁸⁵⁰ The combination of these small-borough members, the more open-minded stratum elected from class-distinct constituencies, and those “advocates” whose uncompromisingness was tempered by

⁸⁴⁸ Sir John Salusbury Salusbury-Trelawny, quoted in T.A. Jenkins, *Parliament, Party, and Politics in Victorian Britain*, 18.

⁸⁴⁹ Bagehot, “Present Aspects,” 252.

⁸⁵⁰ Bagehot, “Present Aspects,” 252; “Oxford and Mr. Gladstone,” 443.

the influence of party loyalty would form, he hoped, a “preponderance” in the Commons that could craft a centrist consensus that could stand for “the nation itself” amidst its diversity.⁸⁵¹ This differed from the proportion of “advocates” to “judges” which Greg seems to have envisioned, at least in his more agonistic moments – Greg’s idea of “middle-class government” did not involve a tepid, consensual, bourgeois politics *à la* Guizot’s July Monarchy.⁸⁵² Stapleton assigned the task of “impartial umpires, between contending interests” to those members who sat for “learning and education,” while everyone else would, it appears, be an advocate of some interest.⁸⁵³ Mackintosh’s seminal early statement partook of a more traditionally hierarchical differentiation of epistemic tasks: “judgment” was best rendered by the “landed proprietors” among MPs, who as a class tended to be more “neutral” and “impartial on more subjects than any other class of men.”⁸⁵⁴ These members of “leisure, large property, temperate character” were to sit in judgment on the claims brought forth by spokesmen of other classes less inclined to contentment with the status quo, in particular those proposals of innovation and reform originated by the distinctive representatives of “the lower classes.”⁸⁵⁵ The latter’s “character was an important element in its composition,” but it had “to be

⁸⁵¹ Bagehot, *English Constitution*, 220; “Present Aspects,” 252.

⁸⁵² We desire “that the aggregate of these 658 chosen men shall, fairly and in due proportion, reflect and understand all those interests, feelings, opinions, and classes of character, which constitute the permanent elements of the nation. We desire that the slow intellects of the country should be represented, as well as the quick intellects of the city; the conservative sentiments of the sturdy drags on the movement, as well as the keen and impatient energy of the movement itself; the refined and philosophic, as well as the contentious and extreme; those who cherish pastoral delusions, as well as those who hug the scarce wider or more real hallucinations of bare utilitarianism; those who love peace, as well as those who love progress; those who are contenting with an unaugmenting competence, as well as those who ‘are in haste to be rich’”; Greg, “Expected Reform Bill,” 252. Greg, in so many ways a stodgy conservative, endorsed a contestatory parliamentarianism that shares a great deal with modern “agonistic democrats.”

⁸⁵³ Stapleton, *Suggestions*, 40.

⁸⁵⁴ Mackintosh, “Universal Suffrage,” 30.

⁸⁵⁵ These were “men of popular talents, principles, and feelings; quick in suspecting oppression; bold in resisting it; not thinking favourably of the powerful; listening, almost with credulity, to the complaints of the humble and the feeble; and impelled by ambition, where they are not prompted by generosity, to be the champions of the defenceless”; *ibid.*, 176-7.

Mackintosh’s thought here about the importance of balance in the legislature between the contented, stasis-leaning segments of the population and the discontented, improvement-oriented ones would find echoes in the post-mortems for the July Monarchy. Prévost-Paradol, for instance, who was otherwise very sympathetic to the Guizotian

checked and restrained by others of a different character” – although of course the same could be said “of any other of those bodies which make useful parts of a mixed and various assembly.”⁸⁵⁶

Underneath this multiplicity of depictions of the epistemic division of labor was a thought nearly constitutive of the variety-of-suffrages school (and of its neighbors in reform aspirations to be covered in the following chapters): namely, an optimistic impression of the relationship between social and ideological diversity and the quality of political decisions. “The great variety...of different elements entering into its composition,” remarked Grey, was the cause of the historic and (with reform) future excellence of the Commons.⁸⁵⁷ “The most dangerous of experiments” to the legislation of the country, Greg wrote, was a “change” which “would throw the representation” into just one of the several hands which now played different instruments in the symphony of deliberation.⁸⁵⁸

A related picture of how “conviction by argument” could function as the rudder of the legislative ship without presuming men to be better than they were found its way into the

Considerations on Representative Government:

if the representative system could be made ideally perfect, and if it were possible to maintain it in that state, its organization must be such, that these two classes, manual labourers and their affinities on one side, employers of labour and their affinities on the other, should be, in the arrangement of the representative system, equally balanced, each influencing about an equal number of votes in Parliament: since, assuming that the majority of each class, in any difference between them, would be mainly governed by their class interests, there would be a minority of each in whom that consideration would be subordinate to reason, justice, and the good of the whole; and this minority of either, joining with the whole of the other,

program, thought it a great defect of this regime that the Chamber was reserved for “only citizens arrived at a certain fortune, a solidly settled fortune, who were in consequence mostly content with their fates, which is a bad disposition of mind for recognizing in a timely way the need for change and progress by which modern societies are always more or less agitated”; *La France Nouvelle* (Paris: Michel Lévy, 1868), 324-5. Prévost-Paradol was a moderate in the doctrinaire mold under Napoleon III, serving the Empire as ambassador to the United States until his suicide at only forty.

⁸⁵⁶ Mackintosh, “Universal Suffrage,” 177.

⁸⁵⁷ Grey, *Parliamentary Government*, 71.

⁸⁵⁸ Greg, “Expected Reform Bill,” 253. He had in mind here the ills caused by the monopoly of representation, in particular, of “the energetic, and the pushing – the men to whom repose is torture – the men to whom the past is all contemptible, the present all sombre, the future all golden.”

would turn the scale against any demands of their own majority which were not such as ought to prevail. The reason why, in any tolerably constituted society, justice and the general interest mostly in the end carry their point, is that the separate and selfish interests of mankind are almost always divided; some are interested in what is wrong, but some, also, have their private interest on the side of what is right: and those who are governed by higher considerations, though too few and weak to prevail against the whole of the others, usually after sufficient discussion and agitation become strong enough to turn the balance in favour of the body of private interests which is on the same side with them. The representative system ought to be so constituted as to maintain this state of things: it ought not to allow any of the various sectional interests to be so powerful as to be capable of prevailing against truth and justice and the other sectional interests combined.⁸⁵⁹

Some scholars have been dismayed to find Mill pinning such hopes on this (what strikes them as flimsy) view of the ground of “reason’s” steady influence over lawmaking.⁸⁶⁰ It would have been surprising, however, not to have found such a passage in the Millian oeuvre, given that its absence would have placed Mill further away from the liberal mainstream on representative government than he in fact tended to be. Read in context, what is surprising is not that Mill should have assented to this thought about how a realizable “deliberative body” would work, but that his version of the theme should have been so neutered – amounting basically to hoping for a 50-50 split of seats between labor and capital and invoking a moralistic notion of the few truly deliberative individuals who turned the tide – relative to the more pluralistic and fluid social imaginaries at work in other figures.⁸⁶¹ In contrast to competing contemporary visions and to other aspects of his own writing about deliberation and representation, Mill’s portrait of the intersection of these two themes in the Commons was a rather stilted one.

Supplementing the more immediate, policy-relevant epistemic benefits of the deliberative Commons were a wider set of educative effects. For most scholars of political thought, the idea of an educational impact deriving from politics in the nineteenth century conjures up Tocqueville on

⁸⁵⁹ Mill, *Considerations*, 447.

⁸⁶⁰ See e.g. Pitkin, *Concept of Representation*, 203; Duncan, “John Stuart Mill and Democracy,” 79. Dennis Thompson’s reading of this passage, while not concerned with situating Mill in context, is probably the closest in spirit to what I say here; see *Mill and Representative Government*, 125-6.

⁸⁶¹ Mill, *Considerations*, 424.

the sense of empowerment and industriousness which democracy spread through civil society or John Stuart Mill on the improving power of the franchise.⁸⁶² But to mid-Victorians, neither of these was the most common way in which politics was supposed to operate educatively. Instead, the chief educational contribution of politics was the rich debate in the Commons. The contestation in the Commons *focused* the national mind – it gave the public a site in which it could evaluate the different positions taken; since all facets of society ideally were present there, following its debates gave the citizen an occasion to transcend the limited domains of his region, religion, or occupation and to encounter the nation as a whole in what we might call its reason-giving dimension. Thus parliamentary deliberation was a preeminent “means of enlightening the minds of the People, and dispelling prevailing errors.”⁸⁶³ Government could act as a spur for “intellectual activity and moral improvement” insofar as it made “those contests for power which are inevitable amongst men, take the form of debates upon questions of policy, and upon the measures affecting the interests of the Nation which are brought before Parliament. These debates are thus rendered a valuable instrument for enlightening the public mind.”⁸⁶⁴ Bagehot called this the “teaching function” of the Commons – a function which, on his taxonomy, was parasitic on the fulfillment of another “office,” the “expressive” one, for its debates could only be educative on the condition that they fully “express[ed] the mind of the English people on all matters which come before it.”⁸⁶⁵ The assembly’s deliberations, we can now see, enhanced wisdom in a very broad sense: they enabled wiser decisions on legislation, and they helped the citizenry itself to become wiser.

But there was certainly a paradox, or at least what looks like one from a twenty-first-century

⁸⁶² See e.g. Jon Elster, “The Market and the Forum,” in *The Foundations of Social Choice Theory*, eds. Elster and Aanund Hylland (Cambridge: Cambridge University Press, 1986), 103-32.

⁸⁶³ Grey, *Parliamentary Government*, 71.

⁸⁶⁴ *Ibid.*, 13.

⁸⁶⁵ Bagehot, *English Constitution*, 289-90. The two were so closely linked that he distinguished them only as “a sort of technicality.”

democratic standpoint, about this latter benefit. What made the Commons such an indispensable *intellectual* institution was that it was “only by parliament, the great national institution in which every one takes some interest” that an “efficient discussion in practice” of an issue could draw the attention of all “the very miscellaneous multitude” that was “the public.”⁸⁶⁶ Yet this discussion was edifying only if it encompassed the diversity and descriptive accuracy to qualify as genuine deliberation – and this qualification was capable of fulfillment (depending on the author) only if either some citizens were excluded from the franchise or if the suffrage, although universal, proceeded on a basis of sociological differentiation which rendered the electoral impact of voters unequal. Thus in order for the Commons to discharge its duty of providing enlightenment for all, it was necessary that not all participate equally in the electoral system. In order for parliament to improve all minds, it could not simply be the product of aggregating, undifferentiated, all votes. To be edifying the Commons had to be deliberative, but to be deliberative it had to avoid democracy.

This picture of the deliberative legislature likely sounds illusory to the observer of legislative politics in modern democracies, which hardly seem to exemplify the salutary division of epistemic labor or the other deliberative excellences which these authors placed at the very heart of parliamentary government. On this front it is important to emphasize two points. First, to reiterate: with the exception of the status quo defenders, this model of deliberation was not seen as actually realized. To its greatest theorists such as Bagehot (and, as we will see later, the champions of PR), the mid-century Commons was only imperfectly deliberative. And yet, second, they felt that there were sufficient glimpses of true legislative deliberation to make their deliberative ideal seem realizable with the right reforms. The conditions of the era’s politics were such that deliberation in their demanding sense of it seemed that it could become the lifeblood of the modern legislature – this is part of what is meant in the frequent references to this period as the “classical age” of

⁸⁶⁶ Bagehot, “The Non-Legislative Functions of Parliament,” in *CW*, vol. 6, 44.

parliamentary politics.⁸⁶⁷ These authors came of age in and developed their conceptions of politics at a time of “genuine parliamentary government,” those “few brief decades in English history, [when] what was said in the Commons actually swayed the outcome of legislation.”⁸⁶⁸ In a theme to which we shall return shortly, party discipline was weak in this period⁸⁶⁹ – too weak for some, such as Gladstone.⁸⁷⁰ While the bulk of our authors attributed a positive role to parties in structuring political debate, helping to secure working majorities for the passage of legislation, and enabling the appointment of a functioning executive cabinet, the parties they lauded were mild and club-like in comparison to modern party machines.⁸⁷¹ Centralized parties which could enforce unanimous adherence to a platform were anathema to this kind of deliberativism; party hegemony would prevent members from responding to the full array of reasons in an epistemically valuable way, constraining them and effectively transferring the locus of power from parliamentary debate to the “wire-pullers” behind the scenes who directed the parties’ movements.⁸⁷² This period of the “heyday of the private member” – when party was important but not determinative, and parliamentary oratory could appear an enduring means of changing hearts and minds – was a rich backdrop against which to theorize a politics in which deliberation was central.⁸⁷³ Moreover, this period of the height of the Commons’s deliberativeness corresponded with the height of interest in the debates in the

⁸⁶⁷ See e.g. Somervell, *English Thought in the Nineteenth Century*, 73; R.H.S. Crossman, “Introduction,” to *The English Constitution*, ed. Crossman (London: C.A. Watts & Co., 1963), 17, 35; Buchan, *Spare Chancellor* 184; Nadia Urbinati, *Mill on Democracy*, 65.

⁸⁶⁸ Boyd Hilton, *A Mad, Bad, & Dangerous People, England 1783-1846* (Oxford: Clarendon Press, 2006), 209.

⁸⁶⁹ See ch. 3, note 513.

⁸⁷⁰ Gladstone, “The Declining Efficiency of Parliament,” *Quarterly Review*, vol. 99, no. 198 (Sept. 1856): 521-70.

⁸⁷¹ Gash, *Politics in the Age of Peel*, 31-2. Hawkins depicts an absolute break in the nature of British parties after the Second Reform Bill; Hawkins, “‘Parliamentary Government’ and Victorian Political Parties,” 667.

⁸⁷² See below, at note 943. The fear of this kind of party dominance was crucial to the PR movement as well; see Floyd Parsons, *Thomas Hare and Political Representation in Victorian Britain* (Basingstoke: Palgrave Macmillan, 2009), *passim*. This theme returns in chapter six.

⁸⁷³ Hanham, *The Nineteenth-Century Constitution*, 106, 201.

Commons, which was the focal point of the intellectual attention of virtually the whole literate strata of the British population.⁸⁷⁴ It was for Victorians a truism that the content of the House's debates percolated through society as a whole, influencing the intellectual tone and political convictions of the nation – and this influence amplified the urgency of raising parliamentary discourse to the highest possible level. The epistemic and educative properties ascribed to the assembly's deliberation did not come from nowhere; they were rooted in the experience of the age. To employ a phrase from a quite other sphere of political theory, for these authors *deliberative representative government* looked to be a “realistic utopia.”⁸⁷⁵

If the previous paragraph fleshed out the *realistic* portion of the above phrase, it is worth putting the accent on the latter word as well for a moment. The student of political philosophy will recall that Mill proclaimed “the ideally best form of government” to be “representative government.”⁸⁷⁶ He was, it ought to be evident by now, not alone in such sentiments: from Harris to Lord John Russell, a wide swathe of the authors in this chapter and similar figures from the time would have assented to this statement. What deserve attention here are the full reverberations of this shared utopianism. For there are variations of utopianism, milder and more extreme versions of it. When these authors – at least the more sophisticated of them who sought to approach politics with a comparative lens – held deliberative representative government to be the best form of government, they did not mean that it was the first among good options, that it was merely preferable by degree to less representative, less deliberative, more authoritarian forms. For them, the consequence of lacking something that at least approximated their desired institutions was not

⁸⁷⁴ See e.g. Stefan Collini, *Public Moralists*, 34, 122. Collini tries to give the modern reader a sense of the magnitude of this interest with an interesting analogy: debates were “followed by the educated classes with the avidity and familiarity now more commonly reserved for the major televised sports.”

⁸⁷⁵ The term comes from John Rawls. See e.g. *The Law of Peoples* (Cambridge, MA: Harvard University Press, 2001) and *Justice as Fairness: A Restatement* (Cambridge, MA: Belknap Press, 2001).

⁸⁷⁶ Mill, *Considerations*, 399.

simply less effective policy, less sagacious lawmaking. It was worse; the fate of societies without such governments was that most formidable of nineteenth-century bugbears: stagnation. In short, they not only held up their preferred form of government as the best possible; they also had a *dystopian* image of those forms that fell short of it.

The reason for their dystopianism about non-deliberative regimes was that “government by discussion” was not just the capstone of the discursive societies theorized in part one – it was their precondition, as well. At the risk of repetitiousness, it is worth reminding ourselves of some conclusions from earlier in the dissertation in order to understand this point.

To wit: Victorians believed that most societies (even in Europe) were stagnant. This meant (depending on the approach and phrasing of the author) that one class, one character type, one set of ideas and values dominated the social-mental landscape in such a way that innovation and novelty could not arise. This was the primitive state of society, and most peoples had never emerged from it.

But the situation was even bleaker than the foregoing would indicate. For not only was it difficult to exit the primitive condition: escaping it was not a once-and-for-all achievement. The progressiveness that came with entering the “age of discussion” was fragile, for relapse was always possible. Some of the avenues by which the progressive society could be undermined were considered in part one, but there was another not covered there: namely, that the legislature would cease to operate deliberatively. What was the connection between the degree of deliberativeness in the legislative forum and broader societal-intellectual regression? Once again, it was Bagehot who expounded the logic in most depth.

For Bagehot, government by discussion was the lifeblood of modern, civilized societies (read: England), without which they would return to the condition of premodern ones like India; it was the sole social process which could durably keep at bay the forces hostile to diversity and new ideas which were inherent in human nature. On this perspective, the deliberative Commons caused

and consolidated spectacular, world-historical intellectual gains. In the absence of the constant stimulus provided by this form of government and the exemplars of the deliberative virtues that it supplied, all progress would cease, for the primitive instincts of man which encouraged imitation, submission to custom, and hatred of minority views would bring an end to intellectual inquiry.⁸⁷⁷ As soon as the Commons, on which so much of the nation's attention was trained, substituted "unimpeded command" as modeled by the world's "*best finished* democracy"⁸⁷⁸ for "reasoned arguments" in "regular representative assemblies," "the mass" of the country would cease to be amenable to "important thought."⁸⁷⁹ If political power proved to be inaccessible to "the impact of argument and the play of mind upon mind," then a major impetus to intellectual inquiry and a source of courage in maintaining and arguing for presently unpopular opinions would dry up.⁸⁸⁰ Only government that "lives by discussion" could provide the public with the resources and the motivation for "continual learning" by which it could "grow and learn" and "come[] to know great principles and understand great questions."⁸⁸¹ But for the fact that deliberative assemblies provided daily testimony of their importance to the "*business*" of public affairs, "argument and dissertation" would seem meaningless to the average man.⁸⁸² Without government by discussion to "quicken[] and enliven[] thought all through society," stultification would overcome all aspects of life, even those,

⁸⁷⁷ Bagehot, *Physics and Politics*, 110.

⁸⁷⁸ He was referring here to the Second French Empire under Napoleon III. On the anti-democratic (and other) lessons which many Britons drew from the Empire, see J.P. Parry, "The Impact of Napoleon III on British Politics, 1851-1880," *Transactions of the Royal Historical Society*, vol. 11 (2001), 147-75.

⁸⁷⁹ Bagehot, "Caesarism as It Now Exists," in *CW*, vol. 4, 112-3; "The Collapse of Caesarism," in *CW*, vol. 4, 156.

⁸⁸⁰ Bagehot, "The Present Crisis in America," 173.

Similarly for Greg, it was in Parliament that the meaning of "individual independence" and "moral courage" – which he gave the lovely name "*pluck*" – was brought "within the reach of ordinary minds"; "French Judgments of England," *Edinburgh Review*, vol. 103, no. 210 (Apr. 1856), 583.

⁸⁸¹ Bagehot, "France or England," in *CW*, vol. 4, 91.

⁸⁸² Bagehot, *English Constitution*, 217.

like the natural sciences, that appeared furthest from politics.⁸⁸³ As Bagehot immodestly concluded, the reason why Darwin and Newton had appeared in England and not elsewhere was because England was the nation in which government by discussion had operated longest.⁸⁸⁴

Because of the close continuity of the political reasoning – and the mental life more broadly – of parliament and the public, getting reform wrong entailed dangers of not only a *political* sort narrowly construed, but of a more general epistemic-moral-mental sort. Bad representative institutions threatened to turn Britain from a “progressive” to a “retrograde” society.⁸⁸⁵ Paralleling the judgment passed by defenders of intellectual and expressive freedom that apathy and absence of inquiry were worse than any error could be,⁸⁸⁶ the replacement of genuine deliberative government by class-rule or an “overweening dictator” or an assembly inured to public opinion was far more deleterious than any particular policy mistake could be.⁸⁸⁷

The conception of deliberation with which the variety-of-suffragists were at work was, in sum, a mixture of high faith and almost otherworldly expectations with detailed interest in the

⁸⁸³ Bagehot, *Physics and Politics*, 132.

⁸⁸⁴ *Ibid.*, 132-133.

This conviction of the national decline (Bagehot called it the “degradation of public life”) that attended non-discussive modes of government was the central, though often overlooked, plank of Bagehot’s campaign against presidentialism. See e.g., *English Constitution*, esp. chs. 1 and 6; “The Federal Constitution Responsible for Federal Apathy,” in *CW*, vol. 6, 168-171; “The Present Crisis in America,” 172-175.

⁸⁸⁵ Bagehot, “France or England,” 91-2.

⁸⁸⁶ E.g. Buckle, “Mill on Liberty,” 62-3. “On any subject, universal acquiescence always engenders universal apathy. By a parity of reasoning, the greater the acquiescence the greater the apathy....Give us paradox, give us error, give us what you will, so that you save us from stagnation.”

⁸⁸⁷ Bagehot, “Average Government,” in *CW*, vol. 6, 87.

The tight connection posited by these authors between the deliberative *legislature* and the broader deliberative *society* complicates Saunders’s thought that non-democratic reformers had simply made a conceptual mistake when citing Tocqueville on the intellectual decay and despotism of democracies. To Saunders, these men had simply failed to note that Tocqueville was remarking on “democratic *societies*” rather than on the “democratic *franchise*”; Saunders, *Democracy and the Vote*, 147. But since British writers like Greg, Grey, and Bagehot denied the practical possibility of a gap between government and society on this score, they were in fact quite right by their lights to have invoked *Democracy in America* on the lack of “true liberty of discussion” in democracies, as Grey did when he mounted his “grave objection” against democratic government, that it suppressed “discussion of conflicting opinions”; *Parliamentary Government*, 173-5.

empirics of its operation.⁸⁸⁸ The complex character of the commitment to deliberation among this strand of parliamentary reform belies the gap that is often imagined to have existed between Mill – the ardent moralist responsive to high ideals, the speculative thinker on politics *par excellence*⁸⁸⁹ – and the doggedly practical, realist, and businesslike political culture of the mid-Victorian era.⁸⁹⁰ Compare Mill, for example, to Bagehot. While Bagehot himself contributed to the stereotype of Mill as a more idealistic and speculative thinker than righter-minded compatriots like himself,⁸⁹¹ he was, every bit as much as Mill, a political theorist of discussion and deliberation, of the “salutary effect” of the “collision of opinions” (Mill’s words), of the “action and reaction of many kinds of minds” and the contestation between “men of various occupations, various tendencies, and various sympathies” (Bagehot’s).⁸⁹² Mill may, as he claims, have derived his ideal of “many-sidedness” and his hymns to diversity from foreign sources such as Humboldt and Tocqueville,⁸⁹³ but the British public had been prepared to receive his lessons through a domestic tradition: the tradition of the representative-deliberative Commons, from Paley and Mackintosh through Bagehot and Grey. While Mill’s deep affection for all things continental led him to look outside his homeland for wisdom on these themes, there was a rich native tradition of political thought which gave expression to their meaning and significance and which was thriving throughout the years of his life which were most devoted to

⁸⁸⁸ This is a combinatory space that modern deliberative democracy is struggling to occupy today; witness the frequent desire for a more “institutional” deliberative democratic theory as in e.g. Graham Smith and Corinne Wales, “Citizens’ Juries and Deliberative Democracy,” *Political Studies* vol. 48, no. 1 (2000): 51-65.

⁸⁸⁹ E.g. the portrait of Mill painted in Reeves, *John Stuart Mill: Victorian Firebrand*.

⁸⁹⁰ See e.g. Émile Boutmy’s classic contrast between the businesslike and un-idealist English and impractical and moralistic French; Boutmy, *Essai d’une Psychologie politique du Peuple anglais au XIX^e siècle* (Paris: A Colin, 1902), esp. 205-21. Boutmy was one of the early titans of modern French social science and a founder of Sciences Po.

⁸⁹¹ See Bagehot’s two review articles on Mill’s *Considerations on Representative Government*, in *CW*, vol. 6, 336-46, esp. 341-2.

⁸⁹² Mill, *On Liberty*, 257; Bagehot, “Parliamentary Reform,” 193.

⁸⁹³ Mill, *Autobiography*, 200, 260-1; *On Liberty*, 215, 261.

theorizing representative government.⁸⁹⁴

In sum, Bagehot and the bulk of his colleagues in representative but nondemocratic reform maintained with a fidelity equal to Mill's the vision that what was permanently valuable in politics was the interplay of diverse opinions and ideas. "The whole fabric of English society is based upon discussion," Bagehot wrote – a claim which even Mill could not outdo.⁸⁹⁵ When Carl Schmitt was looking for worshippers of the parliamentary idols of "discussion and openness," he might just as easily have selected Bagehot as Mill.⁸⁹⁶ After all, it was Bagehot who used the pages of the *Economist* to give this forceful response to the malcontents who would decry parliamentary government as "mere talk": "those who so think have simply no conception of the nature of popular government. In such a government it is not too much to say that 'speech is action.'"⁸⁹⁷ Deliberation was the essence of what a nation did in its political capacity. It was society's central task *qua body politic*, and it was also the wellspring of the wider set of goods which marked it as a free and progressive society.

This fundamental fact about Bagehot's theory – that deliberation upon the whole span of views and interests which constituted English public opinion was the primary political good – has

⁸⁹⁴ My analysis here resembles a point originally made by John Burrow that the "liberalism" which we equate with Mill was not as distinct as often imagined from an older "Whig" outlook; see *Whigs and Liberals*, esp. ch. 3. Among other goals, Burrow wanted to present Burkean Whig thought on representation as a forerunner of the Millian-Victorian zeal for variety. On this point Burrow was not only right, but far more right than he knew – he did not examine in depth the literature on diversity in representation as it continued through the mid-Victorian period, and he therefore was unable to draw out the full implications of his intuitions.

It should be said that the thought about the parliamentary-representative genesis of the "nineteenth-century conception" of diversity and many-sidedness can be pushed far enough that it would begin to parallel Richard Tuck's argument on the origin of the concept of the autonomous individual lying in the concept of the autonomous state that had been developed in the field of international relations; Tuck, *The Rights of War and Peace: Political Thought and the International Order from Grotius to Kant* (Oxford: Oxford University Press, 1999). It is not clear if Burrow wished to go all the way in the direction of casting a standard for personal ethics as an importation from the domain of representative institutions, although he sometimes speaks as if he does. If this was his intention then one would find, in Burrow as in Tuck, the level of the individual following that of the collective/institutional: the many-sided, open-minded person who received such praise from the Victorian intelligentsia following and individualizing the model of the diverse, inclusive, and reason-giving parliament.

⁸⁹⁵ Bagehot, "Average Government," 87.

⁸⁹⁶ Schmitt, *The Crisis of Parliamentary Democracy*, trans. Ellen Kennedy (Cambridge, MA: MIT Press, 1988), 2.

⁸⁹⁷ Bagehot, "The Non-Legislative Functions of Parliament," 43.

proven difficult for even the most sensitive of his readers to appreciate. His admiring biographer, for instance, complained that Bagehot had “confuse[d] means with ends” and failed to specify “what all this discussion should be about,” had failed to construct a “vision of society” to stand as the outcome of his deliberative parliamentarianism.⁸⁹⁸ While one may wish to reject the political theory of Bagehot and the variety-of-suffragists for any number of reasons, it would be wrong to attribute to them this particular confusion in their conception of the value of deliberation – just as it would be wrong to allege that it was only confusion on Mill’s part that led him to care so much for liberty instead of having directed his attention to offering a clearer picture of what his liberty-realizing society ought to look like. The variety-of-suffragists were aware, and were happy to accept, that their conceptions of public opinion and deliberation committed them to a kind of open-endedness and provisionality in the substantive prescriptions which they offered. The conversation – “the giving of reasons,” “discussion, explanation, controversy” – was greater, they thought, than any of the particular conclusions to which it led.⁸⁹⁹

Deliberation was a watchword of mid-Victorian parliamentarianism. There was widespread assent that the country received great blessings from having “an assembly which so much takes to itself the character of a deliberative council,”⁹⁰⁰ and really only the positivists among the relatively mainstream political schools denied its importance.⁹⁰¹ Given its prominence, we ought not to be surprised that the view of it elaborated here was not the only picture of legislative deliberation current in this milieu, and that there was a great deal of contestation and uncertainty about what exactly a deliberative legislature involved.

⁸⁹⁸ Buchan, *Spare Chancellor*, 210.

⁸⁹⁹ Bagehot, “Average Government,” 87.

⁹⁰⁰ Hallam, *Constitutional History of England*, vol. 2, 400.

⁹⁰¹ Harrison, *Order and Progress*, 213-8.

The remainder of this section is devoted to examining three anxieties provoked by the variety-of-suffragist treatment of this theme. While they are related in various ways, for the sake of clarity it is best that they be prized apart. The subjects dealt with are an interesting blend of criticisms overtly made at the time and tensions that the theorist today can draw out of their thought, even if the extent to which they were themselves aware of them is difficult to ascertain. We might name these three sources of concern about the version of deliberation presented in this chapter the technocratic rebuttal, Greg's problem, and Grey's problem.

The technocratic rebuttal is the simplest and easiest to understand of this trio, in part because it remains with us in a form very similar to that which it had then; the fight today between epistemic democrats and the various defenders of the rule of experts and intellectual elites closely echoes this particular Victorian clash. This rejoinder to the mirror theory involved a straightforward denial of that theory's conception of deliberation. While these objectors retained the language of deliberation and could imagine no better way of exalting the Commons than by calling it the greatest "deliberative Assembly that ever existed," in their minds deliberation had no special relationship to the kind of diversity which obsessed the mirrorers.⁹⁰² Instead it was an activity which the wise few – those in fullest possession of the "science of government"⁹⁰³ – performed on behalf of the rest of society.

For our purposes the most interesting articulation of this point-of-view was that of Robert Lowe. Lowe's opposition to the enfranchisement of the working class was the most controversial of the 1860s, both for the inflammatory terms in which he spoke of the lower classes and for his instrumental role in defeating Gladstone's Reform Bill of 1866 (and ending his government) even

⁹⁰² See e.g. Robert Lowe, *Speeches and Letters on Reform*, 86, 36.

⁹⁰³ *Ibid.*, 34.

though he was a Liberal MP.⁹⁰⁴ Lowe was a liberal both in respect of party and of his own broader ideological self-conception, and he could even occasionally be heard to sing a paean to representativeness when it seemed most germane to the anti-democratic message.⁹⁰⁵ But his defense of the settlement of 1832 did not repose on any of the arguments about the representativeness of the status quo described earlier. Instead, he upheld the Reformed Commons as an assemblage of the most competent men in the kingdom, as a body possessed of the technical, empirical, and practical knowledge required for directing a “complicated and artificial society.”⁹⁰⁶ To Lowe the sole vector of evaluation of an assembly was whether its membership was possessed of these knowledges and competencies; any additional question of correspondence between this membership and an image of the society outside the House was irrelevant. Indeed, Lowe was completely nonplussed by the label of “class government” for his beloved Commons, and he cited Macaulay (wrongly, on my view) to prove the mainstream Whig credentials for his indifference to descriptive accuracy.⁹⁰⁷

For Lowe the proof of this legislative wisdom was in the pudding. He explicitly rejected the proposition that working-class input could have improved policy even in those areas which most intimately affected them; he believed that their interests were better looked after by the Reformed

⁹⁰⁴ On Lowe’s extraordinary life, see Arthur Patchett Martin, *Life and letters of the Right Honourable Robert Lowe, viscount Sherbrooke*, 2 vols. (London: Longmans, Green, and Co., 1893). He is occasionally remembered today for the ire which his education reform bill drew from Matthew Arnold; see Arnold, “The Twice-Revised Code,” in *Matthew Arnold and the Education of the New Order*, eds. Peter Smith and Geoffrey Summerfield (Cambridge: Cambridge University Press, 1969), 157-97. Winter notes both that the bluntness of Lowe’s animadversions on the working class were an embarrassment to MPs with similar substantive views, and that Lowe was a radical on every issue but the franchise; Winter, “Cave of Adullam,” 40-1.

⁹⁰⁵ “For, although it is quite true that a Bill for the Redistribution of Seats should aim at making Parliament a mirror of the country, it is also true that there can be nothing more inappropriate than the argument when applied to the enlargement of the franchise. For to pass a Bill which puts the power in a majority of the boroughs into the hands of the working classes, is not to make this House a faithful reflection of the opinion of the country, but is to make it an inversion of that opinion by giving political power into the hands of those who have very little social power of any kind”; Lowe, *Speeches and Letters*, 175.

⁹⁰⁶ *Ibid.*, 10.

⁹⁰⁷ *Ibid.*, 164-5.

Commons than they would have been by an assembly more responsive to their voices.⁹⁰⁸ It was to him a definitive rebuttal to Gladstone's and other reform proposals that "no one has...shown a single practical grievance under which the working classes are suffering which could be remedied by the proposed alteration."⁹⁰⁹ Here we spot a crucial difference between the Lowean technocratic vision of the Commons and the mirroring representative one: whereas someone like Pochin supported reform even as he acknowledged having a high opinion of the current Commons membership's character and performance,⁹¹⁰ for Lowe such a stance was not even conceivable – one of the main thrusts of his apologetics for the current arrangements was precisely to foreclose the possibility of evaluating the membership of the Commons as a concern distinct from its performance.

This difference was noticed in the moment both by mirror theorists and others. Critics of Lowe were aghast that he should have continued to speak of representative government when his arguments consisted of nothing but "indirect ridicule of the representative principle"; they were "perhaps the first time in our history that the theory of a paternal oligarchy has been so nakedly stated; or that the House of Commons has stood forth in the new part of the Benevolent Autocrat."⁹¹¹ Whatever continuities of vocabulary were preserved, Lowe had, it was believed, substituted a strictly capacitarian for a descriptive politics – he wanted English parliamentarianism to instantiate *outré-Manche* the July Monarchy – and consequently it was natural for resistance to his views to call upon the values of justice and the rule of public opinion reconstructed above. But the nub of the dispute with Lowe took place on the terrain of this third value of deliberation. Lowe's

⁹⁰⁸ Ibid., 43-4.

⁹⁰⁹ Ibid., 43. Needless to say, most of his opponents thought that they had amply pointed out such grievances.

⁹¹⁰ Pochin, *Plan*, 4.

⁹¹¹ Cracroft, *Essays*, vol. 1, 161; Harrison, *Order and Progress*, 132. Such critiques of Lowe resemble the attacks on Guizot and the Doctrinaires for having emptied the word "representation" of any meaning; see above at note 728.

opponents were not satisfied just to point out that the MP for Kidderminster had fallen afoul of widespread norms of representativeness. More ambitiously, they hoped to have their cake and eat it too – to use their conception of diversity as an epistemic trump to prove that the wise deliberative legislation which Lowe desired could only be the result of the mirroring which he rejected.

Once Lowe's pole of the debate has been brought into the picture it becomes easier to observe fissures and gradations within the school of electoral variegation. Sidgwick, for instance, begins to look like a midway figure between a technocratic or capacitarian approach and a descriptive one. On the one hand, his emphasis on the partiality of viewpoints and the epistemic need for diversity sound strikingly mirroring; on the other, his tendency to speak of the objects to be represented in their diversity not in terms of "classes, interests, opinions, sentiments" but in terms of "ability" and "special empirical knowledge" echoes more of Lowe than of his opponents.⁹¹² In short, it is ambiguous whether Sidgwick believed that some objective threshold which certified a view as "knowledge" or a group as possessing "ability" had to be crossed before any claim on representation was activated. There is thus unclarity about where precisely the greatest utilitarian after Mill wished to draw the line between capacity and descriptiveness.

Similarly, as pointed out during the reconstruction of institutional programs, not all of the reforms advocated by these figures derived from the search for greater descriptive accuracy.⁹¹³ While, as we have seen, one could justify allocating a great number of seats to the "intelligent classes" wholly from within the sociological or descriptive framework either on the basis of their greater contributions to public opinion and national prosperity or, as Harris did, by building "intelligence" and "virtue" in an ontological way into one's account of society, these reformers

⁹¹² Sidgwick, *Elements of Politics*, 371.

⁹¹³ It is important to bear in mind this point that even authors who announced their fidelity to the descriptive ideal did not derive all of their prescriptions from it, for the plurality of normative sources for a single scheme of representation will be an important part of our analysis of PR.

occasionally recommended amendments that were geared to increase the intellectual caliber of the membership detached from any representative roots. Hence, when Stapleton spoke of seeking that “*learning and education* would obtain their due weight in the legislative scale,” he was arguing in a descriptive idiom; but when he asserted that the constituencies should be evaluated based on their likelihood of returning “men of an elevated morality” “best fitted for discharging legislative duties” and not “the puny ranks of democrattick politicians,” he was speaking the language of Lowe.⁹¹⁴ Likewise, Greg was not to be bothered with providing any underlying theoretical coherence to the separate elements of his scheme; while he could have cast his suggestions for national constituencies and savings-deposit enfranchisement as mirror-improving amendments, he instead viewed them as intelligence-improving ones.⁹¹⁵ There was a comparable ambiguity in Grey, whose defense of his proposal of internally-elected life members seems to have been driven partially by the diversity-promoting motivation of providing space for “unpopular opinions” and partially by the competence-promoting one of guaranteeing the “ablest men” seats.⁹¹⁶ Several thinkers were riven by this duality. If the logical thrust of their position was to privilege diversity over intelligence or character in legislative deliberation, they often did not interpret their position in an exclusive, either-or manner. If no amount of intellect or virtue could save the assembly from the harms that followed a lack of diversity, they were hopeful that diversity might be accompanied by these excellences rather than by stupidity or immorality, even if (as shown earlier) they accepted that the value of representativeness was inconsistent with any project for maximizing merit.

Our discussion of the technocratic rebuttal has thus exposed a certain tension in the theory of deliberation that came with the advocacy of plans of variegated suffrage. But it was a tension of a

⁹¹⁴ Stapleton, *Suggestions*, 46, 38.

⁹¹⁵ For other moments in the Greg corpus in which representativeness seems to be subordinated to an objective notion of intelligence, see e.g. *Rocks Ahead*, 29-31; “Parliamentary Purification,” 619-20. And see above, ch. 3, note 530.

⁹¹⁶ Grey, *Parliamentary Government*, 71, 218.

mild sort. For while these authors did not always specify that in giving their version of “diversity trumps ability” they were not denying that ability could still make a positive contribution on policy outcomes, there was no logical inconsistency in affirming diversity to be indispensable to legislative deliberation while also according an important role to the personal attributes of the members. This was what Bagehot did coherently in describing an ideal Commons as one that joined moderation in its members’ character with representativeness in the distribution of members relative to public opinion. Nor was there any incoherence in Greg giving the representativeness of the Reformed House a passing grade while also hoping to inject greater intelligence into the body. A more acute (and interesting) tension emerges in what I referred to above as *Greg’s problem*. Greg’s problem, which could travel with the kinds of concerns that motivated the technocratic rebuttal but was analytically distinct from them, was the challenge of whether the Commons could be both *deliberative* and *representative* at once. Stated differently, it was the question of whether the values of deliberation and the rule of public opinion were consistent with one another. I give the dilemma this name not because it was an issue peculiar to his writing (it was not), but in recognition of the fact that Greg made an effort to respond theoretically to the issue. This was a problematic which went to the heart of mirroring parliamentarianism, but which was largely ignored – or at most handled indirectly – by our authors, in contrast to the directness with which some of them addressed the tradeoffs between descriptivity and meritocracy. At the least it is certain that none of them *solved* the tension.

Before entering into the project of reconstructing the problem as they saw it, it is worth stating that I do not regard their lack of a clear, trenchant resolution as a failure on the part of this school of thought. Much as Dennis Thompson reads John Stuart Mill’s political theory as a dialectic between the principles of competence and participation without considering it a failure that Mill didn’t show how one flowed from or was resolved into the other,⁹¹⁷ I think that much of what

⁹¹⁷ Thompson, *John Stuart Mill and Representative Government* (Princeton: Princeton University Press, 1976), *passim*.

makes the wider orbit of nineteenth-century British political thought so rich is the interaction between the principles of deliberation and representation. Moreover, it is not simply that in this time and place the tension between these two ideals was more creative than destructive. On the contrary, *Greg's problem* points to a kind of perennial antinomy that any comprehensive theory of modern politics will have to take up; the suppression of one side of this polarity can only result, I suspect, in an implausible and unattractive theory.⁹¹⁸ The only cause for disappointment with the variety-of-suffragist treatment of the matter lies in their having so seldom openly broached the conceptual disjunction between the aspirations to *deliberative* and to *representative* government.

Greg's problem arose when skeptics about this optimistic account of how descriptive representation and deliberation worked in tandem drove a wedge between the two concepts in a way not dissimilar to the tearing asunder of utilitarianism and egalitarianism (which had in the Benthamite school been taken together more or less unproblematically) by the Victorian economist F.Y. Edgeworth. Edgeworth complained of Bentham's formula "the greatest happiness of the greatest number": "is this more intelligible than the 'greatest illumination with the greatest number of lamps?'"⁹¹⁹ Analogously, for these critics deliberativeness and descriptive representativeness were not complementary dimensions of a body like the Commons, but rather conflicted with one another.

Why did they mean by saying that these two values stood in tension? They meant, first and foremost, that mirror theory deliberativism was flawed because it only looked at public opinion in one light; it saw public opinion solely as the resources or matter for deliberation, rather than (to the critics, its more salient feature) as a *constraint* on deliberation.⁹²⁰ Public opinion, from this largely but

⁹¹⁸ To my mind this issue qualifies as one of what Rosanvallon calls "contestations and tensions always being reborn"; *La démocratie inachevée*, 405.

⁹¹⁹ Edgeworth, *Mathematical Psychics* (London: C. K. Paul, 1881), 117.

⁹²⁰ For a similar framing of tensions in the theory of representation in the preceding century, though in a different idiom,

not exclusively Tory perspective, was a set of pressures external to the House which distorted the deliberation within it. If the Commons was to arrive at its decisions in a deliberative manner, then, they thought, the dictates of public opinion as such must be of no significance; as Inglis articulated the point with regard to the agitation for reform, “the mere multiplication of numbers, asking for what they have not, can never, without reference to the reasons which they urge, be an argument to which a deliberative body can be justified in yielding.”⁹²¹ Public opinion, considered as the distribution of views and preferences in the country, was, to a thinker of Inglis’s persuasion, simply of no relevance whatsoever to the conduct of the Commons: “we are not sent here day by day to represent the opinions of our constituents...their general interests we are bound to consult at all times; but not their will, unless it shall coincide with our own deliberate sense of right.”⁹²² If the fact that the public “*demande*d” a policy were reason for its enactment, it followed that the Commons would not be a deliberative assembly at all but something more like the American Electoral College as it has come to operate; it would be simply a kind of grand and unnecessarily numerous notary of the popular will.⁹²³ Indeed, if this public demand were interpreted to contain a threat of civil disturbance unless a given law were passed, then it “will entirely annihilate our deliberative character, and will reduce us to the mere function of speaking the will of others.”⁹²⁴

What is most important to recognize is that from Inglis’s point-of-view the contravention of proper deliberative government did not require that one believe the national voice had reached the volume of unrest or that one adopt a political theory which posited that it was the absolute “duty of

see Fontana, *Rethinking the Politics of Commercial Society*, 151-3.

⁹²¹ Inglis, *Parliamentary Reform*, 13.

⁹²² *Ibid.*, 13.

⁹²³ *Ibid.*, 4.

⁹²⁴ *Ibid.*, 5 For more on this Tory line of thought in the context of the debate over the Reform Act, see Joseph Hamburger, *James Mill and the Art of Revolution*, 44.

an English minister, or legislator, to legislate in exact obedience to every popular demand.”⁹²⁵ All that was needed for the deliberative status of the Commons to be compromised was that “the wishes and wants of the people” *en tant que tel* count as *a* reason among others to take up a particular course, as *a* weight in the decision-making balance.⁹²⁶ The “myriads of their petitions...the millions of their hands” belonged to a different category of thing than genuine reasons.⁹²⁷ Instead, what constituted a body as deliberative just was that it was determined *solely* by the quality of reasons – and not by pressures or clamors or simple numbers – in the course that it set: “This House yields, when it yields at all, to the reason and the arguments by which those wishes and those wants are enforced.”⁹²⁸ In other words, a truly deliberative assembly never, properly speaking, *acted on* public opinion; it ratified public opinion when it was correct, and rejected it when it was wrong: “I am sent here to legislate, not for their will, but for their interests.”⁹²⁹

For the Tory writer, then, the state of public opinion revealed only what the country wanted and supported but not whether those wants were justified or rational or in their interest – the latter questions were what the deliberation in the House was to decide. In contrast to the standard variety-of-suffragist picture of public opinion as a composite entity which by its diversity and comprehensiveness enriched the conversation that could be had in the Commons, this outlook perceived public opinion as a force attention to which was more likely to harm than to refine consideration of the legislative matters at hand by distracting MPs from sounding the true merits of the question. Consequently, they thought, public opinion and the outcomes of the Commons’s

⁹²⁵ Salisbury, “Theories of Parliamentary Reform,” 58.

⁹²⁶ Inglis, *Parliamentary Reform*, 49.

⁹²⁷ Ibid., 49. Presumably, though, even Inglis would have allowed that wishes and preferences could count as reasons on purely (in Dworkin’s terms) “choice-sensitive issues”; Dworkin, *Sovereign Virtue: The Theory and Practice of Equality* (Cambridge, MA: Harvard University Press, 2000), 205.

⁹²⁸ Inglis, *Parliamentary Reform*, 49. See also Paul Smith, “Introduction,” to *Lord Salisbury on Politics*, 41.

⁹²⁹ Inglis, *Parliamentary Reform*, 58.

deliberative process would coincide only casually and sporadically, namely, when public opinion happened to be right. Any more intimate connection between public opinion and the course of legislation, such as that envisioned by mid-century descriptivists,⁹³⁰ was without place in Inglis's thoroughgoing deliberative assembly.

In the previous chapter I noted that Stapleton fit more uneasily than the other authors treated there into the overall architectonic of the theory of electoral diversity. The reason for this qualification can now be made apparent: he detached public opinion from deliberation in a manner more Inglis- than Bagehot-like. Stapleton regarded public opinion with the jealous eye of someone whose top priority was to guard the independence of the "deliberative assembly."⁹³¹ Despite the many aspects of his tract, covered already, which overlapped with the mirrorers, he was at odds with them in his contempt for public opinion. "The present House of Commons," he lamented, "is easily swayed on one side or the other by the breath of public opinion."⁹³² The important question, he went on, was not, has the Commons "'responded quickly and readily to public opinion.' But the real important question is, has this responsiveness resulted in an increase of public happiness and prosperity?"⁹³³ To Stapleton the latter question was simply rhetorical; he was quite certain that it had not, and he listed many policies which to his (very conservative) mind had been foolhardy.⁹³⁴ But there was a deeper point underlying his criticisms of particular policies: namely, the disjuncture between a truly statesmanlike approach to public affairs and a subservient approach in which the

⁹³⁰ Or, even more, such as it was envisioned by PR champions through the innovation of the voluntary constituency. This issue of the relationship between public opinion and parliamentary action is partially dealt with in chapter six, though important parts of it spill over into the uncompleted chapter on the moral effects of PR.

⁹³¹ Stapleton, *Suggestions*, 11.

⁹³² *Ibid.*, 8.

⁹³³ *Ibid.*, 10. The internal quotation was from Russell.

⁹³⁴ *Ibid.*, 14-26.

politician sought to descry the movement of public opinion and follow its trail.⁹³⁵ The first, from his standpoint, corresponded to a deliberative assembly; the second, to an assembly that was merely representative.

This desire for freedom from public opinion in the evaluation and formation of policy had its bounds, even for Inglis-Stapleton Toryism. These bounds were elections.⁹³⁶ But even these limits they wanted drawn loosely. For one thing, election was seen by them as (prospectively) a mechanism for authorization, for investing one person with the right to act in their constituents' name, and (retrospectively) a mechanism for accountability interpreted more in the sense of punishing misdeeds or moral deficiencies than of enforcing a specific legislative program favored by constituents. The idea that the import of elections was that the MP stood for or had responsibility to the *views* of his constituents in any more immediate way was anathema to them. Indeed, they were happy that competitive elections did not return all the members of the Commons; they defended the array of "close" or "rotten boroughs," those which were "owned" by a "proprietor" who could nominate whom he wished for the seat, in large part for being what we would call in today's parlance the ultimate "safe seats" – seats in which, on their understanding, the member by virtue of the security of his tenure could afford to focus entirely on the quality of arguments for and against proposed legislation.⁹³⁷

⁹³⁵ As a protectionist, he naturally chose the 1846 repeal of the Corn Laws as an instance of the latter: "Now the permanent *status* of the country could not have so completely changed in so short a time, as to render *that* advisable in 1840, which was not advisable in 1846. But the sentiments of the people were either changed, or were supposed to have changed, and *that* was what Lord John deemed sufficient reason for changing upon a question, which ought to have been viewed with a Statesman's eye, to have been decided by considerations of the general *permanent* good; but above all, which ought not to have been definitely settled on the ground of popular *will*"; *ibid.*, 25-6. He also made an identical criticism of Robert Peel's flip-flop on the issue.

⁹³⁶ "If in our conduct there be error, our constituents have their remedy at a dissolution. At that time we surrender our stewardship to those by whom it was committed to us; and receive it again, or not, according to their will, and their estimate of our conduct"; Inglis, *Parliamentary Reform*, 14.

⁹³⁷ Although the "close-borough system... doubtless was, grossly abused, by some of those who had controul over those boroughs," it was nevertheless true that "the close-borough representatives were, in reality, the ballast of the unreformed House of Commons....they [the close-boroughs] were destroyed, and thus was the ballast of the unreformed House of

Now, it was open to the proponent of descriptive representation who supported his scheme on the ground that it reconciled the just claims of public opinion and parliamentary deliberation to respond that by “public opinion” he did not mean mere “popular clamor” or “momentary will” but rather a conviction that emerged from extended discussion in which all the standpoints and opinions had been weighed. This was true: in seeking a politics of public opinion properly so-called they did not believe that they were doing anything that would inhibit “due consideration of objections to measures for which there is a popular cry” or impair the process of “testing by discussion the soundness or fallacy of conflicting arguments.”⁹³⁸ And yet this response did not constitute an answer to the real heart of the objection; instead, it only postponed the question. For even if public opinion were rational and durable rather than passionate, fickle, and contrived by demagogues, there still arose an apparent conflict between the identification of the Commons’s duty as being to craft laws that would realize or conform to the public mind and the identification of its duty as being to engage in free and genuine deliberation about the public good. Public opinion on the idealized view of it that one finds among “Whig” writers hemmed in the space necessary for legislative deliberation no less than it did on the disparaging view of the “Tories.” Whatever the condition of the public mind, it was equally the case that some independence from it was required for the Commons to qualify as a deliberative body, and not as a mere notarizing or ratificatory one. Just as someone carrying out instructions from a manual is not a deliberator even if these instructions were themselves written by a committee after deliberation, so “government by discussion” was not actualized even if the parties or constituencies which dictated to the House exemplified deliberativeness in their own domains.

The recognition that there was a tension between deliberation and representation in the

Commons got rid of, and none other was shipped in its room to steady the vessel in its renovated state. Every constituency was changed; hardly one was left to return a member, who might be free from the predominating controul of a fickle popular opinion”; Stapleton, *Suggestions*, 10.

⁹³⁸ Grey, *Parliamentary Government*, 82.

sense of accordance with the wider distribution of views was not solely an insight of outsiders to this school of thought. Hints of such recognition found their way into even the most orthodox theorists of *deliberative representative government*. For instance, Greg urged during the first of his articles on parliamentary reform that “the general silence and indifference” on the reform question rendered the hour particularly opportune for the Commons to take the issue up, since such a “quiet time” furnished an excellent occasion for the House’s “wide and profound consideration” of the “merits alone” of the various “measures to be proposed.”⁹³⁹ We can spot in this passage an awareness of how the claims of representation and deliberation could pull apart. Greg’s message here was not just the mundane one that the fires of “popular passion” and “impatient excitement” were not ideal for “deliberation” and reasoned reflection, though it was in part that.⁹⁴⁰ At a deeper theoretical level his point was that – even on fundamental constitutional issues – deliberation did not need to wait on representation; he was opposing the idea that what we might call the *spokesman* function of the MP must be primary, for this idea would imply that, in the absence of views in the constituencies for which the MP could advocate, he could not participate in parliamentary discussion of a particular matter.⁹⁴¹

More commonly, however, moments of clarity about the distinction between deliberation and representation came not from considering the status quo or reflecting on their own proposed systems, but emerged in a second strand of their critique of democracy. This strand overlapped

⁹³⁹ Greg, “Expected Reform Bill,” 235-6.

⁹⁴⁰ Ibid., 235.

⁹⁴¹ Greg articulated the reasoning to which he was opposed as follows: “If the Legislature is to be confined to the function of discerning, embodying, putting into shape, and carrying into effect the deliberate decisions of the nation, then Parliament would be clearly premature in moving in a matter of such vital moment as organic change, since the nation has not summoned it to action, and has enunciated no opinion as to the extent and direction of that action”; *ibid.*, 235.

Despite the nineteenth-century tenor of much of her theory, Urbinati resists the label “descriptive representation” precisely because she wants to avoid the implication that she is denigrating the constructive role of the MP; Urbinati, “Representation as Advocacy: A Study of Democratic Deliberation,” *Political Theory*, vol. 28, no. 6 (2000), 760. I believe, however, that she is mistaken in doing so.

significantly with a strain of the critique of proportional representation. For now, let us just say this: in addition to the central objection to democracy as an unrepresentative and class-based regime, several figures launched a further attack. When Sidgwick, writing in amazement at “the nature and extent of the influence of parties on representative government” near the turn of the century, stressed how little this phenomenon was foreseen by earlier generations of writers, he in fact was underestimating his forebears.⁹⁴² Many anti-democrats, including variety-of-suffragists like Bagehot, predicted that the need to mobilize large numbers of voters which would arise with a democratized electorate would transfer effective political power from a deliberative assembly to massive, centralized parties directed by unelected “wire-pullers” whose art was not practical reasoning or deliberation but “electioneering.”⁹⁴³ Legislative deliberation would cease, or at least dwindle in importance, for members would have no leeway to change their minds and therefore would not be susceptible to being convinced by an exchange of ideas in the House. Bagehot referred to such a state of affairs – which he forecasted as resulting both from first-past-the-post democracy and from PR regardless of the degree of enfranchisement – as “constituency government,” and he deemed it not a modification, but a direct contravention, of “parliamentary government.”⁹⁴⁴ The mild parties and measure of independence for the individual MP which were essentials for a “deliberative assembly” would vanish in a democracy because democracy meant the dominance of party.⁹⁴⁵

For present purposes, what is theoretically important about this negative appraisal of

⁹⁴² Sidgwick, *Elements of Politics*, 590.

⁹⁴³ Bagehot, *English Constitution*, 297, 299. See also e.g. Grey, *Parliamentary Government*, 157; Salisbury, *On Politics*, 275, 351; Greg, *Rocks Ahead*, 31-2, 162-5, “Achievements,” 229; Aytoun, “Reform Measures,” 370; JF Stephen, *Liberty, Equality, Fraternity*, 155; Lecky, *Democracy and Liberty*, vol. 1, 149; W. Fraser Rae, “Political Clubs and Party Organization,” *Nineteenth Century*, vol. 3, no. 15 (May 1878), 924-7; J.P. Parry, *Democracy and Religion: Gladstone and the Liberal Party, 1867-1875* (Cambridge: Cambridge University Press, 1986), 118. On this front the anti-democrats were certainly not without prescience: alarm at the hegemony of parties would be a major theme of the first recognizably modern political scientists of democracy – the likes of James Bryce, Moisei Ostrogorski, Robert Michels – in the generations following Bagehot and company.

⁹⁴⁴ Bagehot, *English Constitution*, 298.

⁹⁴⁵ *Ibid.*, 304.

democracy as an electoral system which enhanced the disciplinary power of parties was that, while it was often accompanied by jeremiads against the corruption, oligarchic character, and unrepresentative nature of parties, it did not depend on these diagnoses. “Party bands and fetters,” after all, could be seen as augmenting the *representativeness* of members insofar as they put forth a “doctrinal creed in politics” for which voters could express clear assent or dissent.⁹⁴⁶ Even in a case where the tenets to which the MP was yoked contained nothing but “goodness,” he was still “hopelessly enslaved,” a “mouth-piece” and not a true deliberator.⁹⁴⁷ The truth was that there was a basic tradeoff between the MP being “free” and the constituency or party to which he answered being “in earnest.”⁹⁴⁸ Where the latter state of affairs was in existence, the MP was more *representative* in the descriptive sense to which these thinkers were attached – he was more likely and able to bring sentiments and ideas truly held by a portion of the public to bear on parliamentary debate. But a House of such MPs was deliberatively weakened, for the House’s deliberation was better served by electorates which on the whole were characterized by only “vague preferences” at the level of “particular doctrines.”⁹⁴⁹

Another way to articulate this tension is to set it within the perspective of the individual MP. If so far we have envisioned it as a question of how to divide up the political terrain between the public opinion that was supposed to be represented and the deliberation that was supposed to occur in the assembly, we could reframe it as a conflict within the psyche of the representative. For the variety-of-suffragist demanded that the MP serve two masters: he was to *stand for* a view or a class in

⁹⁴⁶ Ibid., 304.

⁹⁴⁷ Ibid., 304-5.

⁹⁴⁸ Ibid., 304. Bagehot provocatively analogized the status of an MP in this situation to “the case of a dissenting minister” who was “ruled by his congregation.” I intend to revisit this assessment in the uncompleted chapter on PR, because importantly he delivered this line as part of his prediction of how PR would undercut parliamentary deliberation.

⁹⁴⁹ Ibid., 304. Sidgwick was one of many thinkers who would continue through the end of the century to follow Bagehot’s line on the drawbacks for representative government of electors having very strongly held views, even going so far as to say that it was important to “keep alive in the mass” of citizens the sense that they ought not to have “fixed political dogmas”; *Elements of Politics*, 557-8.

order to contribute to the *sociological accuracy* of the Commons; and he was to *engage in deliberation*, which required an openness to the other side of the argument, a willingness to change his mind if it was shown that his own position was untrue or inconsistent with the public good. The MP appeared to be under dueling obligations: a “representative” obligation of fidelity and constancy to the views of his electors, but a “deliberative” obligation of openness and flexibility with regard to his own views. To hold to deliberative representative government was to deny that there was a *single* duty encompassing the MP’s position.

In addition to its intrinsic historical and theoretical importance, this material on the challenge of conceptualizing the relationship between deliberation and representation – both for Victorian thought generally and especially for the school of electoral-diversity-based reform – has the added benefit of deepening our understanding of a more famous controversy: the eighteenth- and nineteenth-century debate about delegate versus trustee conceptions of the representative. Unlike the way in which it is frequently presented, this was not such a simple matter as the contest of an “aristocratic” notion of the intelligence and virtue of the MP versus a “democratic” desire for accountability and restraint on sinister interest. While their resistance to delegation contained an elitist dimension – they agreed with the substance of Mill’s analogy of the legislator to the physician who worked for the patient’s health without following the patient’s orders⁹⁵⁰ – this resistance was not reducible to any elitist premises about the intellectual demands of statesmanship. Indeed, the hostility to voter-mandates rested more fundamentally on the seriousness with which they took the ideal of the Commons as a deliberative body. *Qua* deliberativist, then, the variety-of-suffragists and their ideological neighbors opposed delegation as a comprehensive statement of the representative’s

⁹⁵⁰ Mill, “Pledges [1],” article in the *Examiner* from 1 July 1832, in *CW*, vol. 23, 491. And see e.g. Greg, “Expected Reform Bill,” 219-21; Bagehot, “Lord Althorp and the Reform Act,” 229-30; MacCunn, *Ethics of Citizenship* (Glasgow: James Maclehose & Sons, 1894), 102-3.

function (as for example in some philosophic-radical literature).⁹⁵¹ Yet they did not adopt the stock Burkean position either.⁹⁵² Too strident a denial of delegation looked like it might hollow out their notion of representation altogether; the Burkean belief that the MP owed his electors nothing but his “unbiassed opinion, his mature judgment, his enlightened conscience” risked landing them in a simple Lowean technocratic picture of the Commons.⁹⁵³ The position they really wished to occupy was a middle ground, although shaded perhaps somewhat more against delegation than lying right in the center of the terrain – a position very close to Mill’s mature stance, although they were even less interested than Mill in entering into any exact casuistry about the circumstances in which binding or leaving the member at liberty was appropriate.⁹⁵⁴ Representatives were charged with maintaining a significant connection with the views of their constituents; they were not simply to discuss and make policy as if ignorant of and unanswerable to the latter. But *qua* deliberator on the public good they could not be locked into specific positions by voters (or by parties). In the words of Brougham, who wound up preferring a more democratic electoral system than the subjects of this chapter preferred but whose thought on the MP-constituency relationship was wholly orthodox to them, all that the “soundest views of representative legislation” could stipulate was that there ought to be a “*general* coincidence between the conduct of the delegate and the sentiments of the electors.”⁹⁵⁵ Here, they

⁹⁵¹ See e.g., Grey, *Parliamentary Government*, ix; George Cornewall Lewis, *An Essay on the Influence of Authority in Matters of Opinion*, second edition (London: Longmans, Green, and Co., 1875), 184-7.

⁹⁵² It was no coincidence that Lecky described this uncompromising hostility to delegation as part and parcel of a “tone of political feeling” that had disappeared with the eighteenth century; Lecky, *Democracy and Liberty*, vol. 1, 6-7.

⁹⁵³ Burke, “Speech to the Electors of Bristol,” in Burke, *Miscellaneous Writings*, ed. Francis Canavan (Indianapolis: Liberty Fund, 1999), 11.

For a paradigm instance of just how quickly one could move from the rejection of delegation to the rejection of representation as a principle of any sort, see Dupont-White’s use of the Prussian philosopher Friedrich Ancillon; Dupont-White, *L’Individu et l’état*, third edition (Paris: Librairie de Guillaumin, 1865), 214.

⁹⁵⁴ Mill, *Considerations*, ch. 12.

⁹⁵⁵ Brougham, “Speech on Parliamentary Reform,” Oct. 7, 1831, in *Works of Henry Lord Brougham*, 11 vols. (Edinburgh: Adam and Charles Black, 1873), vol. 10, 371. And see Joseph Chamberlain’s effort, using Mill’s *Considerations* as a building block, to flesh out a notion of “general agreement” or “sympathy” in “the relation between represented and representative” – although he allowed that any abstract consideration of the subject would run up against the fact that

seem to have felt, they ran up against the limits of what political theory could say.

Given the deeply contextual nature of the balance of considerations that would determine when it was proper to act as the committed spokesman versus the unencumbered deliberator, it is not particularly surprising that they laid out few theoretically elaborate treatments of the delegate-trustee question. But, as I mentioned at the outset of this discussion, it is surprising and disappointing that they made so few direct attempts at a theory of the relationship between constituency and representative that would capture the tightrope which they wanted to walk between values. In part, this was because the perfect union of deliberation and representation as it regarded the level of the individual MP and his constituents was not their locus of concern; they were concerned with the Commons as an institution and at that level the medley of defects at the individual plane could redound to the benefit of the whole. So long as there was a healthy distribution of “special advocates” and “impartial judges,” it was not so urgent if the former had been reduced to mere mouthpieces by parties who did not permit deviation from a pre-selected platform or if the impartiality of the latter in fact stemmed from their paying less scrupulous attention to the views of his constituents than perfect fulfillment of his role-obligations would have dictated. The Victorian theory of legislative deliberation was not centered on providing an ethics for MPs or voters, but on depicting a functional economy of reasons and arguments.

Nevertheless, Greg did come close to delineating *en passant* a theory of the ideal relationship between voter and MP. Fittingly, given his renown for importing German Biblical Criticism into England, he named it in his favorite tongue: *stand-punct* representation. Greg gave his concept an openly elitist inflection (it appeared alongside a defense of the power of the Lords and the monarchy that was unusual within this tradition). His target was the expansion of delegation: he wanted to prevent electors who wished to “decree what shall be done themselves” from encroaching on the

“the precise limits of independence claimed and allowed must depend on the individual and the circumstances”; Chamberlain, “The Caucus,” *Fortnightly Review*, vol. 24, no. 143 (Nov. 1878), 739.

province of the MP in a way that threatened to bring back “the old Athenian plan of direct government by the people, practised before the principle of representation was discovered.”⁹⁵⁶ The electorate had to be kept from “deciding on measures instead of selecting men,” since it was in his eyes unfit for the former.⁹⁵⁷ But despite his attachment to the elitist language of “men not measures” as the voter’s domain, Greg did not limit the voter to considering solely the personal fitness of the candidate; had he done so, he would have flagrantly contradicted all of his *descriptivist* pronouncements. Instead, that descriptive dimension was satisfied by the elector alighting on someone who shared his perspective; he was to choose, and grant suitable deliberative freedom to, a qualified and intelligent candidate, but he was to do so within the camp of people *like him* in the relevant ways. “The function, theoretical and actual, of the electors, was that of choosing men qualified, by knowledge of their interests and participation in their point of view (identity of *stand-punct*, as the Germans would express it)...to represent them.”⁹⁵⁸ This manner of demarcating what was being described or reflected by *descriptive* representation has echoes today in theories of “perspectives” as the objects of efforts at descriptive inclusion in political assemblies, and this modern literature seems to imagine that there is something distinctly democratic, or at least new, about such a conception.⁹⁵⁹ For Greg, however, this attachment to “point-of-view” as both the basic unit to be included and the proper link between voter and representative was simply a faithful updating of the “original[]” assumptions underlying the development of a “great council of the *tiers-état*,” which was that lords did not share a standpoint with commoners and therefore that the latter

⁹⁵⁶ Greg, “Representative Reform [1],” 470.

⁹⁵⁷ *Ibid.*, 470.

⁹⁵⁸ *Ibid.*, 469.

⁹⁵⁹ E.g. Urbinati, “Representation as Advocacy,” 777; Brown, “Citizen Panels and the Concept of Representation,” 218-9; Mansbridge, “Should Blacks Represent Blacks?,” 629, 635; Iris Marion Young, *Inclusion and Democracy* (Oxford: Oxford University Press, 2002), esp. ch. 4; Anne Phillips, *The Politics of Presence* (Oxford: Clarendon Press, 1995), esp. ch. 6.

needed their own space of representation.⁹⁶⁰ *Stand-punctism* was just an extension of a venerable tradition of English thought.

Most of our variety-of-suffragists – and even Greg in other moments, many of which have already been quoted – would have dissented from this manner of carving up the spheres of deliberation and representation. They usually had no quarrel with voters fixing on true believers in their particular sentiments and ideas; indeed, their system was intended to facilitate this and turn it to best political effect.⁹⁶¹ Yet some set of thoughts that shared the same rough shape of these passages in Greg would seem to have been required of these writers. Why then did more adherents to deliberative representative government not attempt to construct analogs to Greg’s *stand-punct* conception, imperfect as it was, of the place of the representative in the broader economy of opinion-holding and reason-giving? There are, I believe, two reasons for this dearth of explicit theorizing about a middle road that could do justice to both the deliberative and representative functions of the MP. The first is that, without giving the matter sustained theoretical attention, such a middle course was implicit in much of their theorizing. Bagehot is exemplary of how an unstated *stand-punctism* could orient a set of institutional judgments that might otherwise look unconnected. As has been noted at various points heretofore, Bagehot was opposed to both oligarchy (as embodied, on his reading, in the unreformed parliament) and “constituency government” (to which he believed that the Second Reform Act and proportional representation, but not his own proposal, would lead). One way of elucidating the unity behind these two oppositions – the one which has been most underscored so far – is to remark that in his eyes these were both manifestations of class-rule, oligarchy by definition and “constituency government” insofar as it was likely to enter British politics as a byproduct of democracy. But another way of articulating how these two oppositions

⁹⁶⁰ Greg, “Representative Reform [1],” 469.

⁹⁶¹ Even the Tory Stapleton drew the line in a way more empowering of the elector: the elector was to seek out exponents of his “principles” although preferably not of his “*specific* measures”; *Suggestions*, 8.

stemmed from a common ideal would be to say that they each, though from different angles, made the *deliberation between perspectives* impossible: oligarchy because most perspectives were excluded from the assembly, and “constituency government” because, even in the case that it was not accompanied by the corresponding democratic class-dominance, deliberation was replaced by the edicts of parties and electors. A similar unelucidated yet present middle path seems to underlie Grey’s conviction that the Commons which he desired would be “both alive to public opinion” and yet permit sufficient latitude from the yoke of “popular caprice.”⁹⁶² *Deliberative representative government* existed in a happy medium, between (on the one hand) harmful insulation from, or exclusivity with regard to the full span of, public opinion and (on the other) complete dictation of representatives’ views and conduct. Insofar as proponents of electoral diversity suggested such an in-between as the proper space for the work of the MP, their political commentary was not overly hampered by the absence of a more widely-shared and explicit concept of *stand-punctism*, although from a theoretical perspective this absence makes for a disappointing lacuna.

The second reason why so many variety-of-suffragists neglected to offer their own equivalent of a *stand-punct* theory that could take steps toward reconciling representativeness with deliberation was, I think, that to them these two norms largely did not appear distinct. This conflation was in part due to the manner in which their faith in the epistemic power of conversation among diverse points-of-view connected the two in their eyes. But it also owed much to the fact that most of these authors saw the mid-century Commons as both imperfectly deliberative and imperfectly in tune with public opinion, and as far as the actual Commons of their time was concerned they traced the former imperfection largely to the latter. In their rush for reform and their eagerness to cast their plans as corrective of all that troubled the country’s parliamentary regime, they overlooked the distinctness of the deliberative and representative deficiencies. They ran

⁹⁶² Grey, *Parliamentary Government*, 218.

together two discrete deficits – a *deliberative deficit* and a *representative deficit* – because they thought they were suffering from both; in committing this confusion they resemble a great deal of modern deliberative-democratic literature, which proceeds on the unexamined assumption that the *democratic deficit* and the *deliberative deficit* afflicting the contemporary United States and other Western liberal-democracies are identical.⁹⁶³ Just as, so long as twenty-first-century politics remains in its present deficient state, many of us will desire from legislative assemblies and related forums greater measures both of deliberation and of robustness in representing social diversity, the mid-Victorian theorist of representative reform perceived no scenario in which his reform would bring these values into conflict in the real political world.

If this school of reformers did not make fine analytical distinctions between representation/achieving the rule of public opinion and deliberation, this was in large part because they believed that in practice British parliamentarianism, properly reformed, would operate in such a way that each would be improved. It was also because they were sure that they could easily recognize (as they did in passing judgment on parliamentary-electoral arrangements past, present, and potential) when one side of the equation had become too dominant, at which point they trusted that the English capacity “to amend, to engraft, to modify, to curtail” would be adequate to recalibrate to a better balance.⁹⁶⁴ Their confidence that the fuller realization of public opinion in the Commons was also the condition of improved legislative deliberation prevented them from treating the two values with the distinctness and clarity which would have been necessary for them to possess a really complete theory of government at once representative and deliberative.⁹⁶⁵ Because (with the exception of the status quo apologists) they believed that the present arrangements were

⁹⁶³ A similar demurral from theorizing the tension between representation and deliberation in contemporary political theory is found in Nadia Urbinati’s work on representation; see Urbinati, “Representation as Advocacy,” 773-4.

⁹⁶⁴ Greg, “Parliamentary Purification,” 569.

⁹⁶⁵ For the same reasons, modern deliberative democracy is likewise far from providing a complete theory of government at once democratic and deliberative.

neither sufficiently attuned to public opinion nor sufficiently deliberative, it was easy for them to simply assume that representativeness and deliberation always travelled together.

A more grievous theoretical inadequacy, however, was what I termed *Grey's problem*. Grey's problem denoted a sin of omission, a missing piece which kept this body of literature from attaining the theoretical heights it might have reached; it was not inconsistency at a fundamental level. Yet this latter is what one finds in Grey's influential tract.

Grey's trouble arises from this: we have in this chapter encountered two accounts of the source of legitimacy for the Commons. One, exemplified by Lowe and Inglis, staked the normative credentials of the assembly on the quality of its deliberation and the wisdom of its policy (it is not clear which exactly of these is the proper formulation, or even if for them there could have been any daylight between the two). The other, the mirroring view on which we have dwelt, identified the normative grounding of the Commons with its representativeness and set deliberation, as crucial as this was to them, downstream of this value. While there were certainly moments of ambiguity in a literature more political than philosophical, especially around the fringes of our group, it is reasonably clear, as we have shown, that these thinkers' last word was that Britain was a *representative government* and that this meant that resemblance to the country was what legitimated the dominant chamber.

Despite being such a prominent voice for the "qualified suffrage" and supporting many reforms that fit clearly within the variety-of-suffragist framework, with Grey the matter was not so neat. Of the various topics discussed in these chapters, the one of which Grey seems to have been most convinced was the indispensability of diversity for a satisfactorily deliberative Commons – both for the epistemic advantages in crafting legislation and for the wider educative effects, in which he was one of the most fervent believers of his time. The presence of "able men holding unpopular opinions, as well as of Members expressing the conflicting views of the various classes of society,

and of the many different interests which exist in the Nation” was the hallmark of an excellent Commons; at its best, “the House of Commons is also very unlike all the other Representative Bodies of which I have ever seen a description. It is distinguished from them mainly by the variety of the elements which enter into its composition.”⁹⁶⁶ “It would be desirable,” he went on in a show of amity toward Hare and Mill, that “men of almost every variety of opinion” should find their way into the House – and he was certain that there was nothing in his reform proposals to suggest otherwise.⁹⁶⁷ The opportunity of “making their arguments heard in Parliament,” distributed among all the possible wellsprings of enlightenment which existed in society, was the goal of the composition of the Commons.⁹⁶⁸

This rhapsodizing about the blessings of a diverse assembly fit comfortably within the standard mid-Victorian mirroring vision of the Commons – as did his frequent statements which took for granted that descriptive representation was the bedrock of the House. But in fact the Third Earl was not so sure of his footing. For he equivocated greatly on the relationship between the intra-Commons diversity which he so lauded and the principle of representation. “The notion commonly entertained of a perfect Representation of the People” was, he clarified, not beloved of the Greys – it had not motivated his father in making the Reform Act, nor was it guiding his own suggestions.⁹⁶⁹ “What is called a perfectly pure system of Representation” bore no relation to reform of the House, for “some of the most faulty parts of our present system of Representation incidentally serve useful purposes.”⁹⁷⁰

Why did Grey occasionally switch into this representation-deflating idiom? For two

⁹⁶⁶ Grey, *Parliamentary Government*, 71, 65.

⁹⁶⁷ *Ibid.*, 205.

⁹⁶⁸ *Ibid.*, 216.

⁹⁶⁹ *Ibid.*, 66.

⁹⁷⁰ *Ibid.*, 67, 134.

intimately related reasons. First, he was unable to hold his ground as steadfastly as his variety-of-suffragist fellows against a quite different view of representation: a certain democratic view (this is hardly the only one, as we will see in the following chapter) in which representation was not a technique for creating an image of the nation but was instead a mechanism for delivering consent or authorization – consent which had to come from everyone. In the face of this “Chartist” or “French” or “abstract democratical” view, the thoroughgoing mirrorer was simply unmoved: he denied that such “complete suffragists” were in possession of a theory of “representation” at all; branded them campaigners for “exclusive or overwhelming” class-rule; and flatly asserted its incorrectness in light of “our whole Parliamentary theory.”⁹⁷¹ Grey, however, was less solid in his resistance to this alternative. Much like Charles I two centuries prior conceding to his anti-monarchical opponents the usage of the symbolically important term “Republique,”⁹⁷² Grey could not keep himself from the sporadic concession that “representation” hinged on everyone voting in some approximation to equal electoral power. Hence true *representative government* sometimes appeared in his eyes to be “the strict principle of popular Representation,” and thus the excellence of the British Commons had to be considered a deviation from representation *tout court*.⁹⁷³ Whereas a Bagehot or Greg or Harris uniformly distanced democracy from representation conceptually, for Grey the boundary was more permeable.⁹⁷⁴

Second, if Grey could rhapsodize about diversity within the Commons as well as anyone, he sang no paeans to diversity outside its walls. This was quite unusual: for Bagehot, for instance, prescriptions for a diverse Commons were continuous with a profoundly pluralistic social imaginary.

⁹⁷¹ Greg, “Expected Reform Bill,” 251.

⁹⁷² Charles I, *His Maiesties Answer to the XIX Propositions of Both Houses of Parliament* (London, 1642), 9. My thanks to Eric Nelson for impressing upon me the importance of this moment.

⁹⁷³ Grey, *Parliamentary Government*, 67.

⁹⁷⁴ A similar equivocation, much more understandable in a Britain much closer to democracy, crept into Lecky; see *Democracy and Liberty*, vol. 1, ch.1.

Where the editor of the *Economist* envisaged public opinion as multi-faceted, heterogeneous, and (therefore) the carrier of much wisdom, it appears that the Earl pictured it as a kind of cross between an older conception of a monolithic onrush of popular feeling and a Tocquevillian groupthink squeezing out minority opinions. In lieu of Bagehot-style reminiscences on the composite character of the national mind, Grey's *Parliamentary Government* contains many mentions of the force exerted by "the feelings and passions of the numerical majority of the population," cautions about "the sudden variations to which [the "people's"] opinions and feelings are liable," "popular caprice," and the "prejudices of a popular Constituency."⁹⁷⁵ "Popular opinion, or clamour (for they are not always easily distinguished)" was potent enough that "wise" thoughts often went unstated "from a fear of offending the prejudices of the day."⁹⁷⁶ Under such a yoke, it was urgent to gain for some members, especially those of great talent and prudence, insulation from "the prevailing opinion of the day."⁹⁷⁷ In conjunction with his weakness for a "democratic" definition of representation, his recurrence to a vision of public opinion as the howl of the people and an oppressive constraint on debate led to an image of a Commons that looked more detached from the nation than in the more intimate relationship depicted by Bagehot, or in those portions of Grey's own volume which described the intercourse between Commons and society that gave rise to the latter's great educative impact.

To sum up: was Grey engineering deliberative diversity, or representing real societal diversity? Was, as in the traditional construction, the Commons reflecting diversity, or was it, in a reversal of the equation, generating diversity for its own epistemic needs? I don't think even he

⁹⁷⁵ Grey, *Parliamentary Government*, 75, 217.

⁹⁷⁶ Ibid., 82.

⁹⁷⁷ Ibid., 216.

himself knew.⁹⁷⁸

This uncertainty brings us back to an important, recurring message of this dissertation: that political theory is characterized by an indeterminacy and multiplicity of routes between, on the hand, first principles and fundamental commitments, and, on the other, institutions and practical recommendations. Grey did not have to make a clear decision about the normative foundations of his reforms because several paths could take him to his institutional destination. *Grey's problem*

⁹⁷⁸ The ambiguity about the extent to which Grey's Commons was underwritten by the principle of *representativeness* comes out in his interpretation of close boroughs. The number of these boroughs, staples of "old corruption" in which the borough "proprietor" had the power to name whom he wished to the seat, was reduced (though they were not eliminated) by the Reform Act. In the mid-century, there was a notable strand of nostalgia for these boroughs – although almost always accompanied by the qualifier that of course they were not to be revived today, for such levels of corruption would not be tolerated. (Bagehot was one of the few who completely rejected any nostalgia for them.) The most common strain of this nostalgia focused on close boroughs as an avenue for introducing talent into the House and a safe haven for eminent statesmen whose support of unpopular causes had lost them seats in larger, more competitive constituencies: in Inglis's words, close boroughs were the means by which "many of those who...have constituted the chief ornaments of this House in the past and present age, have entered Parliament; many of whom, if this way had been closed, would never have entered these walls"; it was often noted that Pitt and Walpole had sat for close boroughs, and especially that after Burke lost election in Bristol as an incumbent for supporting free trade with Ireland he spent the remainder of his career sitting for a pocket borough. Another cited merit of the close boroughs was that they aided in the stability and quality of the ministry by allowing a seat for those appointed to a cabinet position. Grey subscribed to both of these positive valuations. Now, neither of these virtues had an obviously representative dimension, and the second one, a practical matter of the well-functioning of the executive, seems intractable to any representative gloss. However, it was possible to give an explanation of the value of the close borough in which representativeness featured. Harris – and even Stapleton, though in a less thoroughly theorized manner – saw the close boroughs as venues for the representation of the real social entities which were the nation's intelligence and learning. Both Harris and Alison were clear about a further representative service provided by them: close boroughs, because they could be purchased by those who had risen to wealth or prominence at various posts throughout the Empire or be put in the hands of such men by the borough proprietor, offered to colonial and imperial interests an "unobtrusive but spacious channel which admitted their representatives to the British Parliament." This line of thought allowed that these constituencies could be decried as a form of corruption when judged against a standard of purely competitive elections, but asserted that in practice they operated to ensure representativeness of the more intellectual reaches of the nation as well as its global face. While Grey did not, so far as I am aware, highlight the imperial inclusiveness of close boroughs (despite having served as Secretary for the Colonies), he did at times shine a representative light on their contribution: they were guarantees of the presence of "minority" opinions in the House even when "popular opinion is running strongly in one direction." (In keeping with the theme of the first section of this chapter, he emphasized that this presence was demanded for the minority "even if it were clear that they were in the wrong.") Grey's reading of the positive place which close boroughs had once occupied in the ecology of the Commons thus hung midway between yearning for a time in which representation counted for less, in which the electoral system was more openly geared to the production of non-representative political goods, and celebrating a set of constituencies which, however anomalous they may have appeared in the light of institutional symmetry, in reality had enhanced the representative character of the House. We might crystallize this dividedness by saying that Grey did not make up his mind with regard to whether the close borough MPs constituted a kind of Coleridgean clerisy dropped into an otherwise representative body, or whether they stood for elements of the social-intellectual fabric of the country in a way not fundamentally different from their counterparts of less "corrupt" constituencies.

See Gash, *Politics in the Age of Peel*, chs. 7-9; Bagehot, "History of the Unreformed Parliament," 301; Inglis, *Parliamentary Reform*, 34; Grey, *Parliamentary Government*, e.g. 215-6, 120-1; Harris, *True Theory*, 46-7; Stapleton, *Suggestions*, 46; Alison, "The Reform Bill," 15-6, 26-7; Coleridge, *On the Constitution of Church and State* (London: Hurst, Chance, and Co., 1830).

further reminds us that in investigating the thought of even highly reflective and intellectual politicians, one rarely finds clarity of principles at the bottom.

The mirroring vision of deliberation and its treatment of the interaction between deliberation and other desiderata for the Commons was, all at once, its subtlest, most intricate, most sprawling, and most problematic aspect. A more straightforwardly depicted, though perhaps less convincing, value rounded out the normative side of their theory.

4) *Stability*

Proponents of the variegated franchise attributed a fourth advantage to their model: stability. Their method of regulating the suffrage, they argued, could do more to assure the peace and tranquility of society than any other.

The case they made for the stabilizing benefits of their system resembled their standpoint on its deliberative advantages in closely tracking arguments that were being made in the domains of toleration and freedom of discussion. The overlap between the defenses of *representative* and *tolerant* government was substantial; it is noteworthy that not one promoter of the variety of suffrages considered in this chapter was, as far as I have discovered, an opponent of the consolidation of the freedoms of the press and religious toleration that marked their century.⁹⁷⁹

The stabilizing capacity of the variety of suffrages was anchored in an optimistic moral psychology similar to that described in part one as the psychological underpinning for the liberalization of the press. The confidence in the pacifying impact of parliamentary representativeness could therefore be described as the application to the sphere of representation of the psychology of “fair play” which was such an integral part of the philosophy of toleration in the nineteenth century. The variety of suffrages was, in this regard, perfectly continuous with the less

⁹⁷⁹ Alison, writing in the early 1830s, came the closest: although he stopped short of advocating repressive measures, he was deeply suspicious of a democratic-populist bias distorting the publishing market.

metaphysical, more empirical versions of the pacific theory examined in the first half of this dissertation – a continuity which should not be surprising in light of the common Whig provenance of these sets of ideas.⁹⁸⁰

Interestingly, in the mid-century period one of the most cogent articulations of the bearing of this psychology on the representative sphere came from W.R. Greg, who had a well-established reputation for personal pessimism.⁹⁸¹ “There is a wide and indestructible difference,” he wrote, “between being not successful and being not heard – between being outvoted and being excluded – between being defeated after full deliberation in a legislative assembly and being denied a hearing and a seat in the assembly.”⁹⁸² This difference was, Greg went on, not merely a normative principle on which philosophers dwelt for the sake of, say, determining whether a given government was legitimate. It was also an empirical law about the temperament of citizens under open parliamentary regimes. In most cases of discontent citizens’ “ground of complaint is, not that their candidates are outvoted in Parliament, but that they are not allowed to go there, – that their opinions are rejected, not *after*, but *before*, discussion”; the basic demand of ideological and interest groups was not to impose their wishes on society, but was rather the moderate, reasonable one that they be participants in the deliberation, that they be not “altogether overpowered, suppressed, and virtually non-existent because non-apparent.”⁹⁸³ Given that, in most citizens, the desire for inclusion in the arena of deliberation was more basic and powerful than the need to see one’s views triumph, a representative system that truthfully reflected the underlying social realities could be relied on to keep the peace in the diverse and conflictual societies of the modern world.

⁹⁸⁰ Both J.R. Pole and John Burrow noted *en passant* the presence of this view in Whig thought of the first third of the century; see Burrow, *Whigs and Liberals*, 44; Pole, *Political Representation in England*, 495.

⁹⁸¹ John Morley, “W.R. Greg: A Sketch,” 214-5.

⁹⁸² Greg, “Parliamentary Purification,” 622.

⁹⁸³ *Ibid.*, 622.

Greg was hardly alone in his certainty that being heard – the satisfaction with what we might term the receipt of *deliberative consideration* – trumped the desire for one’s group to capture political power or for policy to be dictated by one’s own priorities. Professions of faith in the pacific properties of *representative* (as opposed, in their lexicon, not to *direct*, but to *class*) government abound in the variety-of-suffrages literature. Bagehot wrote that the “uniformity set in 1832” had made the task of preserving “calm” in times of “popular excitement” more difficult by shutting off from the lower classes any means of “adequate expression” in the Commons.⁹⁸⁴ Creasy spoke of the truth, in accord with which he had crafted his own recommendation, that “men who, while unfranchised, are the noisy opponents of all establishments, will, when they receive the franchise, often become their steadiest and most zealous supporters”; a “prudent mind” would not risk letting any group grow “alienated” and “sullen” by its electoral exclusion.⁹⁸⁵ Where “an equal chance” was afforded to “both sides” of a dispute, Pochin held, then the decision arrived at was strengthened; “all ground of refusal to abide by” it would vanish when the losing side had only its failure to “convince” others of the “justice” of its cause to blame for its loss.⁹⁸⁶ This “reasonable” temperament obtained even among the working classes who, despite having been unjustly excluded from parliament, did “not ask for the whole” of the electoral power but only for a “share” consistent with keeping their views from going “unrepresented.”⁹⁸⁷ The “Reformer” gave a pithy condensation of this line of thought: according to his “settlement of the question of Reform” “every class and interest in the Country

⁹⁸⁴ Bagehot, “Lord Althorp and the Reform Act of 1832,” 224.

⁹⁸⁵ Creasy, *Text-Book*, 55, 61.

⁹⁸⁶ Pochin, *Plan*, 18-9. Pochin added a further stabilizing credential to his plan’s list of virtues, namely, that incorporating the urban working-class into the Commons would end the unrest caused by demagoguery. Demagogues, on Pochin’s telling, were able to stir up the people only by virtue of the latter’s being kept out of the political process: as soon as the lower classes possessed “a definite and tangible guarantee, that in all matters of legislation their interests shall not be overlooked, or their own view of disputed cases inadequately stated,” then the “floating suspicions mostly in the nebulous state lurking in the minds of some of them” which were “extremely useful to demagogues” would dissipate; *ibid.*, 8. Macaulay shared this belief that inclusivity in representation was a key to ending demagoguery; see Joseph Hamburger, *Macaulay and the Whig Tradition* (Chicago: University of Chicago Press, 1972), 38.

⁹⁸⁷ *Ibid.*, 7-8.

would be represented, and would combine and be equally interested in upholding the Constitution, because from the land-owner to the working man all would have a voice in the Councils of the nation.”⁹⁸⁸

This dimension of the variety-of-suffrages framework corresponded to and encapsulated the progressive hopefulness of the Victorian period, the vision of political society as an open and cooperative enterprise. It was not an age prone to dwell in Hobbesian fashion on the dynamics of vainglory or unsociability. Instead, the variety-of-suffragists shared and built upon the contemporary sense that inclusion and the opportunity for expression were more basic human needs than dominion or supremacy. Whatever the advantages of a “liberalism of fear,” this was decidedly not the character of the liberalism examined in this dissertation. For these authors, liberal policies respecting religion, the press, and representation were what exempted the nation from fearfulness about its politics.

Securing the country against the discontent that arose from being excluded from the Commons meant ruling out both oligarchic and democratic suffrages. The perils of the former were graphically illustrated by the downfall of the July Monarchy of France under Guizot in 1848. Although the Monarchy was a parliamentary regime that on many fronts pursued policies approved of by mainstream British liberals, to the variety-of-suffragist its highly restricted franchise founded on a unitary censitary requirement made the regime a kind of ticking time-bomb. Bagehot, for example, decried Guizot’s fidelity to this circumscribed, “bourgeois” franchise as “a great misfortune,” one that could not but have invited a revolutionary backlash from the innumerable groups and interests excluded.⁹⁸⁹ Similarly, democracy could be cast in a parallel way as an unstable because exclusive form of government. While the democratic electorate was not *formally* exclusive –

⁹⁸⁸ “Reformer,” *View*, 20.

⁹⁸⁹ Bagehot, “M. Guizot,” in *CW*, vol. IV, 443. For similar sentiments from other figures, see Saunders, *Democracy and the Vote*, 77, 134.

this is, of course, what made it democratic – the forecast that “the views of all other classes” would “inevitably be swamped” due to the vast numbers of the working class conveyed a kind of *practical* exclusion as the result of uniform universal suffrage.⁹⁹⁰ These “swamped” groups would be every bit as restless and unsatisfied with their condition as the classes formally disenfranchised by the oligarchic state. “Democracy,” as Alison wrote, lacked stability due to “the fatal principle of *uniformity in representation*”:

uniformity necessarily excludes a great proportion of the nation from the legislature. The electors, composed—or, what is the same thing, for the most part composed—of a certain class in society, cannot sympathise with other bodies; they are careless as to their complaints, indifferent to their welfare, swayed probably by an adverse interest ; and the inevitable consequence is, that the ejected classes become discontented, and public dissatisfaction goes on accumulating, till it terminates in a convulsion.⁹⁹¹

“Great inequality in the representation,” he continued, was the sole reliable preventative of such “catastrophe.”⁹⁹² Democracy shared with oligarchy the fault of lacking surety against the neglect of integral components of society.

(This picture of the unstable-because-exclusive nature of democracy was, it ought to be said, not as widely shared as the corresponding picture of oligarchy. Indeed, as the reader will have noted, an opposite flaw – stagnation, deadness to new ideas and strong passions – was more often ascribed to democracy.⁹⁹³ Hence, depending on the angle from which the author approached democracy, different fears came to the fore: if one thought of democracy primarily as *undeliberative*, one was inclined to take alarm at its potential for stasis and immobility, whereas thinking of it as *exclusive* tended to produce alarm at its instability. The perception of democracy as being closed, without an

⁹⁹⁰ Pochin, *Plan*, 19.

⁹⁹¹ Alison, “The Reform Bill,” 15-6. And see Russell, *History of the English Constitution*, 180.

⁹⁹² *Ibid.*, 16.

⁹⁹³ On this count it is no coincidence that Tocqueville was a favorite author of the variety-of-suffragists: he had prognosticated that “great revolutions will become rare” in democratic epochs; see *Democracy in America*, vol. 2, part 3, ch. 21. See also Seymour Drescher, “‘Why Great Revolutions Will Become Rare’: Tocqueville’s Most Neglected Prognosis,” *Journal of Modern History*, vol. 64, no. 3 (1992), pp. 429-454.

“inlet” for the diversity that marked society,⁹⁹⁴ could forebode *either* civil disruptions if the author imagined these excluded elements as liable to bristle at their degradation, *or* a homogenizing, stale politics *à la Tocqueville* if one imagined them as valuable insights suppressed by the moral irresistibility of democratic majorities and the environment of uniformity.)

The differentiated suffrage was thus conceived as stabilizing for the same reason that it was thought to be just and deliberative: it realized a kind of equal opportunity for the different “classes, interests, and opinions” of which modern Britain was constituted. The effort to explain stability in this way could lead to some interesting and questionable *façons de penser*. For one, it led (as may already have been evident in the language of quotations throughout the chapter) to a tendency to personify the opinions, ideas, interests, and classes with which these authors were so preoccupied. In a manner that parallels the objection today to affirmative action programs or quota systems that they essentialize the groups intended to benefit from them, the Victorian theory of descriptive representation could seem to replace actual citizens with a hypostasized assemblage of impersonal categories. The political order risked upheaval if certain *ideas* were not given a parliamentary space of appearance; revolution would be courted if certain *interests* were not accorded the respect which they merited. At the end of the 1860s Charles Renouvier, the leading French Kantian and a devoted republican, divided theories of representation into those which (wrongly) involved the personification of ideas or other social “entities” and those which (rightly) operated on the view that systems of representation had no other objects than persons.⁹⁹⁵ The variety of suffrages, at least in many of its permutations, would have fallen on the wrong side of Renouvier’s classification.

A second presupposition – one less “ontological” but still questionable – was a potent

⁹⁹⁴ Alison, “The Reform Bill,” 25.

⁹⁹⁵ “The right of being represented (*se faire représenter*) belongs, as do all possible rights, to men, and not to ideas, and every idea which does not have the force to cross the channel of the representation of persons...cannot aspire to a social role. Let it content itself then with the ordinary ways of propagating ideas”; Renouvier, *Science de la morale*, vol. 2, 248.

connection on the citizens' part with the "representative like him," the representatives who stood for or belonged to his group. To the Victorian descriptivist about representation, it was enough to ensure stability that all the relevant social-ideological groups be represented because every citizen could feel consulted and included in the legislative process through the strong tie that bound him to the representatives of the shared group-identity.⁹⁹⁶ This felt commonness of identity between the artisan and working-class representatives, or the dissenter and dissenting MPs, facilitated the acceptance by the nation of the policies that passed the Commons; even those segments of the population who had resisted a given law accepted it with grace once passed because they had been consulted (virtually) in the process by which the law was made. Hence, although parliamentary government in diverse societies was inconsistent with everyone being satisfied with the *results* of legislation, it was not inconsistent with a *process* that satisfied everyone. Because of the tight psychological link, the close "confidence," which "might undoubtedly be presumed" to bind the "class of members" "within the walls of the House of Commons" with the corresponding group of citizens in the society at-large, a genuinely mirroring Commons "enhance[d] the value and authority" of the decisions made "to an incalculable extent."⁹⁹⁷ Accuracy in reflecting society, in conjunction with the power of the bond felt by the citizen toward the members sharing the identity(ies) salient to him, guaranteed a kind of procedural satisfaction that could outweigh the unavoidable moments of

⁹⁹⁶ A similar thought appears in the comeback that "virtual representation" is making today – a virtual representation that dare not openly announce itself – as conceived by some deliberative democrats and political scientists; see e.g. the work of Jane Mansbridge. In multiple articles Mansbridge has stated that "advocates of particular political views who lose in one district...can hope to be represented by advocates of those views elected in another district"; see e.g. Mansbridge "What does a Representative Do?" 125; "The Many Faces of Representation," working paper, Kennedy School of Government, 1998; "Rethinking Representation," *American Political Science Review*, vol. 97, no. 4: 515-28. While she prefers the term "surrogate representation" and denies that she endorses virtual representation, what she is describing here is a revival of old-style virtual representation; compare her language with that of the Gladstonian defense of virtual representation in the 1860s as presented by Floyd Parsons, "*Ignis Fatuus* vs. *Pons Asinorum*," William Gladstone and Proportional Representation, 1867-1885," *Parliamentary History*, vol. 21, no. 3 (2002): 374-85. Andrew Rehfeld similarly reads Mansbridge as returning to a traditional notion of virtual representation; Rehfeld, "Representation Rethought: On Trustees, Delegates, and Gyroscopes in the Study of Political Representation and Democracy," *American Political Science Review*, vol. 103, no. 2 (2009): 214-30.

⁹⁹⁷ Pochin, *Plan*, 18.

disappointment when one's preferred policies lost. Being "virtually" present in the legislature through the participation of members associated with one's sector of society, mirror theorists posited, was more important to the vast majority of citizens than substantively getting their way, even on quite bitter contests of principle.⁹⁹⁸

To put this much of the burden of social stability on the shoulders of accurate descriptive parliamentary representation was an act of great hopefulness, a leap of faith all the more remarkable given that the assignment of such efficacy to political institutions was the article of the variety-of-suffrages creed most out-of-step with the intellectual tenor of the time. The nineteenth century is typically credited with the realization of the limits of politics, with the discovery of "society," "the economy," "culture" as coequal or greater forces than the political system in shaping the course of human events. As Sidgwick wrote, summing up generations of thought before him: it was an "allusion [*sic*] that any form of government can ever give a complete security against civil war," for this security "must rest on a moral rather than a political basis."⁹⁹⁹ The variety-of-suffrages school, at least in its more enthusiastic moments, demurred from this analysis; getting politics right, which fundamentally collapsed into the problem of crafting a truly *representative* reform, was sufficient to keep away the specter of revolution.¹⁰⁰⁰

Despite the oddity of these locutions and assumptions, the attempt by the variety-of-suffragists to theorize the pacific advantages of their representative system is a testament to their

⁹⁹⁸ Stapleton, *Suggestions*, 47. On the basis of this moral psychology, variety-of-suffragists would thus have been perfectly capable of denying that their arrangements violated any rule against "invidious comparisons"; Estlund, *Democratic Authority*, 36, 168. As mentioned at ch. 3, note 559, engagement with the variety-of-suffrages school should provoke doubt about how solid the democratic foundations of epistemic democracy are.

⁹⁹⁹ Sidgwick, *Elements of Politics*, 648. Sidgwick was here using "moral" in a broader sense than it has for us today.

¹⁰⁰⁰ See e.g. Mackintosh's essentially electoral-parliamentary account of why England had not been susceptible to revolutionary turmoil: "Our ancient policy did not trust the preservation of order and liberty to those general principles of morality which, in all countries, influence the conduct of good citizens; it bound all classes, by ties of pride and attachment, to a system which bestowed important privileges on all. As every new class arose, it was fastened to the Government by these constitutional links. This policy left no class politically powerful, who did not visibly draw their power from the Constitution"; Mackintosh, "Parliamentary Reform," 481.

continuing relevance. What they hoped and believed was, fundamentally, that the formula of *diversity plus justice* could outperform the older ideal of a homogeneous or unanimous society *even on the issue of stability*. Do we not still, in various ways and across various political domains, hope that this is so, and are we not still searching for explanations as to how this could be the case?

Although the claims of the differentiated franchise to enhance stability received wide assent, they were subjected to several lines of critical interrogation. One of these is of special concern to us, and can serve as a kind of bridge into the broader democratic response to this school of representation which is the subject of the following chapter.

The bitterest objectors to the stability component of the variety-of-suffrages outlook were not paternalists or authoritarians alleging that the ship of state could be steered safely only by wise captains or strong hands. Instead, they were democrats. To these latter, the plans surveyed in this chapter reified harmful divisions of class and rank and delivered the Commons over to a sectarian mindset that would exacerbate existing social tensions. Albert Venn Dicey, who, as will appear in the next chapter, was primarily exercised by fundamental philosophical problems with the variety of suffrages, nonetheless painted a lamentable picture of the fracturing impact which it had in practice. “Incalculable evils” he wrote, followed from the “tendency to intensify differences” which was inherent in these plans.¹⁰⁰¹ Instead of “members” who aimed at and deliberated upon the common good, “special representatives of a class” would conceive of their primary loyalty as being to that “something sacred” inhering in “classes,” “orders,” and “interests.”¹⁰⁰² The sociological perspective guiding the plans of differentiated suffrage would encourage MPs to see their mission as fidelity to

¹⁰⁰¹ Dicey, “The Balance of Classes,” *Essays on Reform*, 81. This yearning for a sense of national unity that would transcend the estrangement of classes was characteristic of the essays in this volume taken as a whole. For Gladstone’s similar turn away from “class representation” in this (his proto-democratic period, one might call it), see Saunders, *Democracy and the Vote*, 181-2; Maurice Cowling, 1867, 29. For a similar revulsion in the French context, see Rosanvallon, *Le Peuple Introuvable*, 90.

¹⁰⁰² Dicey, “The Balance of Classes,” 79, 81. As a democratic pamphleteer put it, there ought not to be “representation of a class” but only “representation of the ‘people’ – that is to say all classes blended and, as it were, welded together”; “Political Euclid,” *The Reform Problem: Its True Solution* (London: Effingham Wilson, 1866), 27-8.

the group for which they stood rather than to the nation for which they made laws; “from their very position” they would feel it their duty to “display and intensify class feeling,” and consequently “the most fanatical, the most narrow” minds would be drawn to parliamentary politics.¹⁰⁰³ The young Mill, before the shift in his political thought which *Democracy in America* would work, similarly bemoaned that representatives under this theory were reduced to “mere attorneys of certain small knots and confederacies of men” who would treat the legislature as a battlefield of “private interests.”¹⁰⁰⁴ This was hardly a recipe for stability. Instead of a deliberative idyll in which the various sectors of society congregated to settle on a commonly acceptable course of action, the Commons would be something more like disputed terrain on which hostile, implacable adversaries fought. The rosy psychological premises to which these thinkers appealed may well have been true as a general matter, but the deleterious effects of their schemes rendered them inapplicable in the sphere of representation.

Fears that the variegated electorate would in fact result not in national harmony but in more adversarial social relations could occasionally spill over into the ranks of mirroring theorists themselves. Greg, for instance, opposed projects for “assigning to the working classes a certain number of *special* representatives, to be chosen by them exclusively” because of the “unseemly and perilous antagonism” it would create when questions with a strong class-valence came up for debate.¹⁰⁰⁵ The sectarianism of class-specific constituencies and the too-close identification of MPs with particular classes would “most perniciously aggravate, that disseverance and hostility of classes,

¹⁰⁰³ Dicey, “The Balance of Classes,” 80.

¹⁰⁰⁴ Mill, “The Rationale of Representation,” 44. See also Dennis Thompson, *John Stuart Mill and Representative Government*, 101.

¹⁰⁰⁵ Greg, “Representative Reform [1],” 474-5. Opposition to quotas often takes this form today; e.g. Lakeman, *How Democracies Vote*, 135-6; Rehfeld, *Concept of Constituency*, 230, 236. Insofar as similar attacks against quotas were marshalled in a systematic way, this was done by theorists of PR, for whom the variety-of-suffrages tradition as a whole was liable to these objections. There is some irony in PR authors having turned against it on this score, since in many other respects they were in agreement with the ideas in this section about the contributions of inclusive representation to civic stability.

that separation of society *into horizontal layers*...which, of all the features and tendencies of the condition of England, is, perhaps, the most uncomfortable and menacing.”¹⁰⁰⁶ In Greg’s anxiety about the corrosive impact that integrating more class-based elements into the electoral system might have, we encounter an interesting intellectual phenomenon: the convergence of opposite ends of the ideological spectrum. Of all the protagonists of the last two chapters, Greg was likely the one with the most thoroughly elitist sensibilities. And yet, in turning against all institutionalizations of the mirroring thesis more radical than his own, he made use of an argument dear to the Idealist branches of Victorian democratic thought that would gain traction late in the century: namely, that the health and stability of society depended on a shared moral purpose that transcended class affiliation.¹⁰⁰⁷

The champions of electoral variety did not have a satisfactory response to these criticisms; for the most part, this aspect of their clash with the democratic camp consisted of a kind of “we-say, they-say” exchange. Cole’s answer to the “objection” that his plan would “provoke” an “invidious” “contest of classes” was simply “a denial of the fact that any such consequences would ensue.”¹⁰⁰⁸ Neither side could convince the other of the accuracy of its prediction; indeed, it was far from clear what would count as decisive evidence that the pacific gains attributed to the feeling of being included and deliberatively considered were or were not offset by the destabilizing risks associated with heightened group-identification. Insofar as the contest between the prevailing mirror theory and its democratic critics revolved around the question of the sources of stability for representative government, this particular debate generated more heat than light.

¹⁰⁰⁶ Ibid., 476.

¹⁰⁰⁷ See e.g. Richter, *The Politics of Conscience*.

¹⁰⁰⁸ Cole, *Middle Classes*, 66.

Chapter Five

Democracy, Diversity, and Contestability: Democracy *against* the Variety of Suffrages

The previous chapters' recovery of the sociological, variety-of-suffrages tradition of representation is important for political theory not only in its own right, as a sophisticated attempt to realize an ideal of descriptive representation under conditions of diversity and to provide a theoretical and institutional base for a "liberal" government that would avoid class-rule. Recovering this theory is also significant in an instrumental sense, for it enables us to come to a fuller understanding of democratic theory itself. Without recognizing how pervasive the theory of electoral diversity was and what potent appeal it came to have across the ideological spectrum, we are liable to overlook two crucial arguments for manhood (or at least widely extended) suffrage in this formative period for modern democratic theory. In addition to the array of other arguments in favor of democracy current in the period,¹⁰⁰⁹ it was incumbent on mid- and late-Victorian advocates of a more democratic franchise to address this powerful alternative on its own terms, and this they tended to do in one of two ways. This chapter will examine these two strands of democratic argumentation.

1) Diverse Democracy

In an age as obsessed with the theme of diversity as the Victorian era was – and as convinced of its epistemic benefits and the indispensable part it played in the progressiveness of societies – democrats had to show that parliamentary democracy was not inconsistent with diversity. This was, as we have seen, quite a tall order; one of the foundational, animating theses of the theory of the variety of suffrages was that electoral democracy would stifle diversity, that, by transferring

¹⁰⁰⁹ Other prominent arguments in favor of democracy were, naturally, important in the era, especially those about the educational benefits of political participation and the deserving character of the working class.

the preponderance of electoral power to the working class and erecting the rule of “mere numbers,” it would prevent the translation of England’s social and ideological diversity into the House of Commons and thus lead to the atrophy of the national discussion that was responsible for the country’s progress. The differences in their specific institutional recommendations did not obscure from these authors the important fact that they shared an understanding not only of diversity’s inestimable advantages and of representation as a descriptive or mirroring concept, but also of the threat to these commitments posed by democracy.

Advocacy of the variety of suffrages rested, then, on two sets of claims: the first concerning the positive worth of a mirroring parliament and the deliberative-epistemic significance of diversity, and the second concerning the inconsistency of a democratic suffrage with the realization of the forgoing ideas. One important strain of Victorian democratic theory consisted of accepting the first set of claims while rejecting the second. The nexus of representative-deliberative-epistemic values that inspired the myriad sociologies and institutional concoctions sketched in the previous chapter were endorsed by these democrats as the correct *ends* for the designers of electoral-legislative structures. Their contribution to the advancement of the democratic cause lay in upholding a widely-extended, uniform suffrage as an appropriate *means* for the achievement of these ends. They envisioned democracy, among its other qualities, as an electoral system which was *welcoming and inclusive of* new ideas, which gave space to the full range of different social agendas and ideologies.

To recast democracy in this mold meant dispelling the fear that a further extension of the suffrage would give parliament over to a monolithic clique of members who sprang from or appealed exclusively to the working classes and who would thereby crowd out the spokesmen of all but one set of ideas and interests. Such a state of affairs in the legislature would create a politics that was both tyrannical and undeliberative, or rather, it was the former because it was the latter: where parliamentary discussion was nonexistent due to the exclusion of contending viewpoints, policies

could be nothing other, Grey deplored, than the imposition of “a mere will.”¹⁰¹⁰ Deliberation meant, as we saw Inglis grandly pronounce in the previous chapter, a politics of reasons and not will, and it required opposition, debate, and difference, all of which were eschewed by despotic exercises of will, whether those of a single Napoleonic figure or an unchecked multitude that monopolized seats in the legislature.

In light of the powerful hold exercised by this condemnatory picture of democracy as the intolerant, absolutist regime of a specific class, democrats had to make the case that a fundamental premise of the antidemocratic argument from the value of diversity was false: namely, the premise that the working classes thought and acted as a unified body. Without this unity, the fact of the “overwhelming preponderance” of its “numbers” would be far less threatening to liberal ideals¹⁰¹¹; it was only because they constituted, or could most often be expected to constitute, a consolidated ideological-political force that their entrance into the electoral arena would block the other streams of interests and opinion from the Commons and cause parliamentary politics to become unrepresentative. Any hope of reconciling to the democratic cause the influential liberal circles which adhered to programs of variegated suffrage would depend upon defeating this view of a crushing working-class homogeneity. Notwithstanding the exception of the alarm at the advance of socialistic ideas noted in the previous chapter, the debate over the ideological unity or dividedness of the working classes proceeded in a characteristically Victorian way in the sense that it was less interested in the *content* of working-class beliefs than in their *distribution*. Samuel Bailey, whom we saw in part one of this dissertation articulating one of the most sophisticated pre-Millian analyses of the diversity of opinions, could have recognized in these disputes about the suffrage much of his own

¹⁰¹⁰ Grey, *Parliamentary Government*, 181. Grey explicitly derived his thought on this subject from Guizot who, at least on this subject of the difference between “reason” and “will,” wielded as great an influence across the Channel as any homegrown British thinker. In this vein Grey went on to cite at length a crucial passage in which Guizot distinguished two concepts of the “majority”: “the idea of an opinion which is accredited, and that of a force which is preponderant”; François Guizot, *History of Representative Government*, 60.

¹⁰¹¹ Alison, “The Reform Bill,” 15.

sensibility. We might even say that this line of democratic argument was simply the application to the political life of the working class of Bailey's dictum that "in any given state of knowledge or ignorance, it is much better that the error and ignorance should be of a multiform than a uniform character."¹⁰¹²

The argument that the beliefs of the working classes reached this necessary threshold of multiformity took two basic forms. The first was a simple empirical claim about the present distribution of working-class opinions. Democratic reformers were insistent that the image of the working classes as a monolithic mass that thought and moved in concert (often at the behest of demagogues) was merely a nightmare induced by fear of the unknown, a nightmare belied by the reality that the working classes were riven by disagreements on political topics. As the historian and Liberal-party publicist George C. Brodrick (about whom more will be said in the following section) wrote: "We speak of the working class for the sake of convenience, but in reality the working class is not a class at all in any political sense, but an unstratified and incoherent aggregate...[who] are perfectly incapable of being rallied under one banner."¹⁰¹³ For Brodrick, the "working class" was a sensible term only when used to pick out a socioeconomic group; to treat it as denominating a single political or ideological integer was to indulge in an empirically-unfounded hypostasis.

The lesson that it was "idle to talk of unity among the working classes" featured even more prominently in the work of another figure closely linked to Brodrick: John Boyd Kinnear.¹⁰¹⁴ Kinnear was a quite radical figure – an uncompromising individualist, supporter of women's suffrage, and virulent critic of "privilege" – and he had a brief moment in parliament before being

¹⁰¹² Bailey, *The Pursuit of Truth and the Progress of Knowledge*, 242.

¹⁰¹³ Brodrick, "Household Suffrage and Parliamentary Government," in *Political Studies* (London: C.K. Paul & Co., 1879), 282.

¹⁰¹⁴ Kinnear, *Principles of Reform: Political and Legal* (London: Smith, Elder, and Co., 1865), 19.

unseated by the future Liberal Prime Minister H.H. Asquith.¹⁰¹⁵ He was also, in contrast to much of mid-Victorian liberalism, distressed by the decline of concern for the “abstract rights of men in politics,” and he wished to re-inspire his compatriots with a notion of “the extension of the franchise” as a matter “of infinite value in itself alone.”¹⁰¹⁶ These high phrases notwithstanding, Kinnear devoted more of the chapter on the suffrage in his 1865 political treatise to the heterogeneity of working-class belief than to anything resembling a proof of a natural right to the vote. “All our fear” and “half the folly that is uttered on this topic” of working-class enfranchisement would dissipate, he assured his readers, if they acknowledged that “there is not a single question on which they are united and form ‘a class.’”¹⁰¹⁷ Like Brodrick he preferred to pluralize the name of the group he wanted added to the register: “it is not a ‘working class’ that is to be admitted: it is ‘the working classes’”; “there is no object or motive that can be suggested,” he went on, “which we shall not see at a glance would affect them all differently.”¹⁰¹⁸ Kinnear put the point with particular forcefulness, but the core idea of these passages attained the status of a sort of refrain in reform camps. Even the great Liberal MP John Bright, usually considered the archetype of the crusader for urban and manufacturing interests against the traditional landed elite rather than the sort of liberal moved by the discourses of diversity and deliberation, emphasized that “opinions differ just as much among [the working classes] as among the people above them.”¹⁰¹⁹

As the quotation from Bright indicates, reformers attempted to draw on the political experience of the already enfranchised portions of the population to make their point that the

¹⁰¹⁵ On Kinnear, see Gordon F. Millar, “Kinnear, John Boyd (1828–1920),” *Oxford Dictionary of National Biography*, Oxford University Press, 2004 [<http://www.oxforddnb.com.ezp-prod1.hul.harvard.edu/view/article/40269>].

¹⁰¹⁶ Kinnear, *Principles of Reform*, 10-1.

¹⁰¹⁷ *Ibid.*, 16.

¹⁰¹⁸ *Ibid.*, 16, 19.

¹⁰¹⁹ Quoted in Saunders, *Democracy and the Vote*, 124. Saunders is rare among historians in noting the presence of the question of ideological diversity within the working class during the Second Reform period. It is also noted briefly but interestingly by P.F. Clarke in “Electoral Sociology of Modern Britain,” *History*, vol. 57, no. 189 (1972), 35.

“horizons and planes of thought and sentiment” that characterized a particular class included a range of “differences” in “feelings, opinions, and traditions.”¹⁰²⁰ Democrats hoped that even upper-class conservatives could be brought to acknowledge that the normal condition of economic classes was ideological heterogeneity, since a basic fact of parliamentary life was that it engaged members of the upper classes in policy debates and political conflicts with fellow members of their ranks. If this multiformity of belief and allegiance obtained in the classes already enfranchised, then surely, democrats judged, it was reasonable to attribute the same variations and disagreements to the working classes, even if these variations were less apparent among the lower orders due to their current marginalization in the political process: “on any question of the day, we shall find them holding as great a diversity of sentiment as their superiors in station”; “ nothing is more certain than that they have no intrinsic element of coherence, and will on every question be moved by the same infinite variety of motive and reason which influence the minds of those whom we call the ‘upper’ or the ‘middle’ classes”¹⁰²¹ Applying to the currently excluded portion of his countrymen the postulate of the naturalness of diversity which has appeared at various points in this dissertation, Kinnear argued that one must expect diversity among them

simply and necessarily because the working classes are composed of men, not of electric clocks, all worked by a central battery, and because each man among them thinks as much for himself as the average of those above them do, while they contain a full proportion of those who follow their own judgment in each separate question of the day with as positive confidence that their own particular reason is better than their neighbours’, as does the most independent or obstructive member of the House of Commons....[We must] try to remember that we really have not to deal with any huge vague image of some unknown and awful power, but only with a certain number of individuals who act and think under the same rules as ourselves.¹⁰²²

To presume unanimity among the lower orders was nothing less than to conflate a difference of

¹⁰²⁰ Cracroft, “The Analysis of the House of Commons, or Indirect Representation,” in *Essays on Reform*, 169.

¹⁰²¹ Kinnear, *Principles of Reform*, 16, 18. He continued, “There are Whigs among them and Tories,” before listing a long series of opposed allegiances and policies which he believed could be found among the lower class. According to Sir Llewellyn Woodward, this was an accurate depiction of working-class ideas; see Woodward, *The Age of Reform, 1815-1870*, second edition (Oxford: Clarendon Press, 1962), 161.

¹⁰²² Kinnear, *Principles of Reform*, 16-7.

socioeconomic status with a difference in human nature.

To this breed of reformer, the existence of diverse opinions within the working class meant that the arrival of electoral democracy was wrongly conceived as the unleashing of the sort of unstoppable “moral and political force” which was believed to have been divined by Tocqueville.¹⁰²³ An extended and uniform suffrage was, instead, simply a mechanism for making the system of representation more “adequate” by including a “true representation of labour.”¹⁰²⁴ Because the working class was as marked by diversity as any other class, further extensions of the suffrage would not inaugurate an age of “tyranny of the majority,” would not usher in an era in which “any one kind of legislative opinion,” maintained by the unified will of the multitude, held an iron grip on political power.¹⁰²⁵ In Kinnear’s words, the upshot of this truth about workingmen’s opinions was that “the fear that there is a class...which would be supreme, and ‘swamp,’ as the phrase is, all the rest” was groundless.¹⁰²⁶

The important role which the postulate of the multifariousness of working-class opinion played in dissolving the apparent tension between the values enshrined in the mirroring-sociological theory and a democratic suffrage is well illustrated in the writing of the Christian socialist Frederick Denison Maurice. Among the central missions of his formidable activism were the education of working men in preparation for their enfranchisement and the promotion of working-class involvement in politics. But he retained as well a strong attachment to the deliberative ethos that inspired so much of the variety-of-suffrages theorizing. He decried, in a way remindful of Grey, the

¹⁰²³ Seymour Drescher, *Tocqueville and England* (Cambridge, MA: Harvard University Press, 1964), 220.

¹⁰²⁴ Cracroft, “The Reform Session of 1867,” in *Essays, Political and Miscellaneous*, vol. 1, 175.

¹⁰²⁵ Albert Venn Dicey, *Lectures on the Relation between Law and Public Opinion in the Nineteenth Century*, 218. Interestingly, Dicey was making this point even after he had long grown quite disenchanted with democratic England as it moved further from his classical-liberal preferences. Much more will be said about Dicey in the following section of this chapter.

Among modern writers, Jeremy Waldron has levelled a similar argument against fears of majority tyranny; see Waldron, “The Core of the Case against Judicial Review,” *Yale Law Journal*, vol. 115, no. 6 (2006), esp. 1398.

¹⁰²⁶ *Ibid.*, 15.

elevation of the “will of the majority” above any “standard of truth,” and he expressed fear at what he thought were the potentially deleterious moral consequences of “the slavish reverence for numbers” and the “talk about the ‘will of the majority’” which he heard being trumpeted by some segments of the democratic movement.¹⁰²⁷ Nevertheless, even while laborers still suffered, in his eyes, from a very imperfect state of education, he scoffed at the dreadful forebodings of a “general suffrage” turning the Commons into a monolithic, despotic arm of the working class, and he did so in no small part due to his conviction that the diversity within the working class would prevent it from “swamp[ing] all the other classes in the country.”¹⁰²⁸ How did he know that this salutary division prevailed in the working class? Because, if the most numerous class really were so tightly bound ideologically as to have one will, it would not need to wait to be “admit[ted] to vote” before imposing it.¹⁰²⁹ No set of political arrangements could guarantee society against the dangers of a “mere multitude” united by a single political mission, and it was consequently a waste of political ingenuity to continue engineering dikes for a flood which, if it came, could not be held back.¹⁰³⁰ Happily, due to the country’s deliberative, tolerant ethos this misfortune was unlikely to befall England, and the probability of its occurrence was in no way increased by widening the suffrage.¹⁰³¹

¹⁰²⁷ Maurice, *The Workman and the Franchise*, 224, 211.

¹⁰²⁸ *Ibid.*, 217.

¹⁰²⁹ *Ibid.*, 217.

¹⁰³⁰ *Ibid.*, 217.

¹⁰³¹ T.H. Green founded his theory of democracy in moral and spiritual considerations beyond the bounds of this discussion, and, as he was broadly untroubled by the possibility of majority tyranny. Yet even he was eager all the same to cite the diversity within the previously excluded classes as a reason for confidence in the beneficial practical operation of the democratic system. If Green’s own appreciation of this fact was a relatively unphilosophical and opportunistic piece of his activism for reform, later Idealists weaved these observations about diversity within the demos into the fabric of their democratic metaphysics. Take, for instance, Bernard Bosanquet’s vision of democracy as a site for the playing-out of the Hegelian dialectic between the organic holism of society and the infinite differentiation of society’s “logical units” and “communities,” a system for harvesting the “whole compass of individuality which society contains.” This can, I would submit, be seen as the merging of German philosophical influences with the attempt to demonstrate the accord between democracy and the ideals of descriptiveness and diversity that we are now examining.

If, judged against Mill and earlier vintages of Victorian liberalism, the Idealists of the century’s final decades seem remarkably insouciant about the possibility of the tyranny of the majority, this was in no small part because of the

For conservative opponents of a reduction in the property qualifications for the franchise, this particular talking-point was the most tiresome element of their adversaries' propaganda; they voiced annoyance at how "much stress" was placed "on the fact that all the working class do not agree in politics."¹⁰³² Lord Salisbury (at the time Viscount Cranborne) railed against this refrain as nothing better than "unsupported assertions": "the first thing which the friends of this Bill tell us is, that the working class will not act politically *en masse*," and therefore that worries about a permanent working-class "preponderance" were not justifiable grounds on which to limit the suffrage.¹⁰³³ This issue was, Salisbury concurred, "the root of the matter," but he dissented wholeheartedly from what he took to be the reformers' naïve optimism on the matter; however "divided in opinion" the working class was on some ancillary questions, on "matters upon which their pecuniary interests are concerned" they exhibited "perfect party discipline" under the "exacting and despotic rule" of trades-union leaders.¹⁰³⁴ Needless to say, democratic reformers, with the exception of some socialists, denied that there was greater uniformity (let alone a "rigorous obedience" to communistic dictates¹⁰³⁵) in the working class on economic questions than on any others.¹⁰³⁶

concerted efforts of mid-century democrats to portray the working class as a segment of society as permeated by disagreement as any other. This continuity should, perhaps, cause us to rethink the familiar assumption of a stark break between the Idealists and other traditions of nineteenth-century political thought. The descriptive ideal, the keystone of classical Whig theories of representation, could still be glimpsed beneath the Hegel-inspired jargon that prevailed at the *fin de siècle*.

Bosanquet, "The Reality of the General Will," in *The British Idealists*, 139; Bosanquet, *The Philosophical Theory of the State* (London: Macmillan, 1899), 137. On Green's theory of democracy, see e.g. Richter, *The Politics of Conscience*, esp. chs. 3 and 8; Peter Nicholson, "Introduction," to Green, *CW*, vol. 5; Tyler, *Idealist Political Philosophy*, 70-1. On Idealist unconcern about majority tyranny, see Richter, *Politics of Conscience*, 203, 256. On Bosanquet and pluralism, see Peter Nicholson, *Political Philosophy of the British Idealists*, 214-8.

¹⁰³² George Robert Gleig, "The Reform Bill," *Blackwood's Edinburgh Magazine*, vol. 99, no. 607 (May 1866), 666. He was quoting from a speech by the conservative politician Lord Stanley. Stanley was complaining here of the belaboring of this point by Gladstone, although, as we have seen, the complaint applied much more widely.

¹⁰³³ Salisbury, "The Reform Bill," in *Lord Salisbury on Politics*, 210.

¹⁰³⁴ *Ibid.*, 210.

¹⁰³⁵ *Ibid.*, 212. See e.g. Kinnear, *Principles of Reform*, 18-9.

¹⁰³⁶ As Brougham said in reply to this prediction that the working classes would leverage their numerical advantage in a

An appreciation of the centrality of the question of the extent of lower-class ideological diversity to debates about democratization enables us to notice a usually overlooked dimension of the persistent Victorian inquiry into the deference, or lack thereof, among the lower orders. The thesis of the English populace as a “deferential” one is normally, and indeed correctly, thought of as part of the debate over whether democratic rights could be harmonized with proper authority, whether it was “safe” to extend the franchise in the sense that the leadership of the country would not be seized by the unfit rabble.¹⁰³⁷ Yet the reality which the concept of “deference” was intended to capture in this era was not a simple acquiescence to an unchallenged or time-honored caste of wise rulers. During an “age of transition” in which the authorities who received this deference were not themselves unified in outlook – as they had been, almost all Victorians believed, in the ages of “feudal lord and sovereign king”¹⁰³⁸ – deference meant not the simple veneration of unquestioned powers but the reflection of a heterogeneous pattern of thought and interest each stripe of which had its own tenets and luminaries. It was in this light that George Cornwall Lewis could see political *parties* in the plural as channels through which intellectual excellence could attain a directing influence on government and public opinion, and that Brougham could have confidence that a basically democratic suffrage would operate consistently with accurate representation of the greater

democracy to expropriate the upper classes: this forecast “also assumes that there is to be a union of the working classes all over the country in order to return this majority. Then, if they are likely to combine for the purpose of indirectly effecting the confiscation of property, why do they not now combine for the purpose of seizing upon it directly? For assuredly they possess this power in every country, and yet in none is there any more alarm felt respecting such a measure, than there is an apprehension of the horses in the country combining to kick, or the oxen to gore men to death.” The young JS Mill conveyed the same message in a debating speech in favor of constitutional reform: “He asserts that the people are desirous of destroying property. I shall not enter into this question for I consider it to be irrelevant, but I cannot refrain from saying if the people desire to destroy property why do they not destroy it now? Have they not the physical power that they must always have?” This method of defusing alarm at measures of enfranchisement with the provocative remark that the lower classes could do as much damage without the suffrage as with it parallels Maurice’s thought previously analyzed.

See Brougham, *The British Constitution* (London and Glasgow: Richard Griffin and Co., 1861), 95-6, 73, 91-2; Mill, Speech on the British Constitution [2], 19 May 1826, in *CW*, vol. 26, 380.

¹⁰³⁷ See e.g. Cowling, 1867, 58-9; Kent, *Brains and Numbers*, 46; David Moore, *The Politics of Deference: A Study of the Mid-Nineteenth-Century English Political System* (Hassocks: Harvester Press, 1976), *passim*.

¹⁰³⁸ Hazlitt, “The French Revolution,” in *Selected Writings* (Oxford: Oxford University Press, 1981), 87.

sociological importance of the upper classes.¹⁰³⁹ Because at least a critical mass of lower-class electors could be trusted to follow traditional political leaders, and because these leaders were divided among themselves, there was no threat, these reformers thought, of deliberation among contesting viewpoints being displaced by an unvarying slate of delegates from a unanimous class.¹⁰⁴⁰

Taken too far, though, this defense of the democratization of the suffrage based on the multitude's susceptibility to the "moral prestige" of "intelligence" or the legitimate "influence of property"¹⁰⁴¹ had some rather perverse consequences for the theory of democracy. If it showed that a regime more inclusive of the working class was "safe," it also risked making its achievement seem far less urgent. For it eliminated one of the most powerful reasons for bringing the working classes into the electoral fold in the first place, namely, that they had their own distinctive "sentiments on public affairs," that there were peculiar "notions, right and wrong, which are fermenting in the minds of the working classes," the exclusion of which from the formal channels of politics would impoverish parliamentary discourse and undermine the assembly's claims to representativeness.¹⁰⁴² There remained, of course, plenty of reasons to endorse an augmentation of working-class electoral power without this one: the gains to stability of making the political process more inclusive; the moral and educational benefits of citizenship; the recognition of the deserving character of working-class citizens, among others. But, in comparison with the argument for working-class inclusion

¹⁰³⁹ Lewis, *Influence of Authority in Matters of Opinion*, 149-50, 181; Brougham, *British Constitution*, 82, 74. Of the Whig architects of the First Reform Act, Brougham was the figure who came closest to endorsing a simple democratic franchise: he preferred the inclusive qualification of "a good plain education" to any property requirements, as well as roughly equal electoral districts and a uniform franchise applying to them all; *ibid.* 73, 95-6.

¹⁰⁴⁰ Kinnear was representative as usual in his thinking on this front. He wrote that, since the working classes were divided into patterns of belief similar to those in the already enfranchised strata, they would "when admitted to power, merely add to or turn the majority in each locality according to its particular circumstances, leaving us still governed by the prevailing sentiment in all classes, and distinguished into parties much the same as at present"; *Principles of Reform*, 16.

¹⁰⁴¹ Leslie Stephen, "Value of Political Machinery," 846; Francis Jeffrey and Henry Brougham, "Parliamentary Reform," *Edinburgh Review*, vol. 17, no 34 (Feb. 1811), 264.

¹⁰⁴² Bagehot, "Parliamentary Reform," 196; Mill, Speech on the Representation of the People [2], 13 April 1866, in *CW*, vol. 28, 66.

based on their distinctive thoughts and perspectives, these other rationales were lacking in one respect: they had little to say about what the groups that were to be enfranchised *contributed* to politics. The arguments from recognition or from the educational advantages of political participation concerned the benefits reaped *by* the working classes from their inclusion, and the argument from stability, if inflected with a strong note of deference, could look like nothing more than the implementation of the cynical credo of the archduke of antidemocracy, the young Salisbury (then Lord Robert Cecil), that “the best form of Government...is one where the masses have little power, and seem to have a great deal.”¹⁰⁴³

(The question of whether the right way to understand the incorporation of hitherto-excluded group was as conferring a benefit upon that group, or as improving the political life of the nation more broadly through that group’s unique contributions, was reprised in another reform movement, that for women’s suffrage. There was a split within the rationales given for female enfranchisement between, on the one hand, the family of views that saw this measure as done for the benefit of women – whether it was a right owed as a matter of justice or a boon to women’s welfare which the state was fortunate enough to be able to bestow – and, on the other, those which conceived of it principally as an enhancement of the epistemic capacities of the political system through the addition of women’s distinctive perspectives and ideas. This latter standpoint, which had always formed part of the movement’s argumentative arsenal, became especially prominent in the years before the First World War; it appeared, for instance, in two of the most important political texts of the period, L.T. Hobhouse’s *Liberalism* and Ramsay MacDonald’s *Socialism and Government*.¹⁰⁴⁴)

¹⁰⁴³ Salisbury (then Lord Cecil), “Theories of Parliamentary Reform,” 66.

¹⁰⁴⁴ See e.g. Hobhouse’s declaration that “the larger wrong done by the repression of women is not the loss to women themselves...but the impoverishment of the community as a whole, the loss of all the elements in the common stock which the free play of woman’s mind would contribute”; *Liberalism*, 54. MacDonald stated unequivocally that if “there is a case for the enfranchisement of women, it should consist in a proof that women’s experience is different from men’s.” His own proof that the “experience and mind” of women could make a distinctive, irreplaceable contribution to a “rational state policy” hinged on his belief that 1) the modern welfare state was increasingly “assuming the

The democrat of deference, then, presents something of a conundrum, akin to that presented by a certain Whiggish or skeptical line on religious toleration, associated with figures like Macaulay in nineteenth-century England and Bayle or Voltaire during the Enlightenment. A democracy in which the working classes had nothing distinctive to say was like a toleration of infidels on the grounds that the ways in which they differed from the orthodox were of no practical significance.¹⁰⁴⁵ In the same way that a dissenter or a Catholic might have accepted the policy of toleration while balking at the dismissive spirit in which it was granted, to the modern liberal-democrat the attitude of the democrat of deference towards those whom he would enfranchise may sound objectionable. Relative to this kind of democrat, the twenty-first-century reader may have more sympathy with those authors from the previous chapter who, seeing the working classes as quite able and likely to dissent from the conclusions of their social superiors, paid them the tribute of trying to limit their power. After all, Bagehot's motivation for seeking seats for the urban artisans was precisely that they had "peculiar sentiments" to "express," that there existed such a discrete social-intellectual entity as the "views of the working classes."¹⁰⁴⁶ The democrat of deference counted the absence of distinctive working-class views as a point in favor of uniform universal

responsibilities of a family and becoming like a family in its spirit and action" and 2) women had special insight into and knowledge of family life; see MacDonald, *Socialism and Government*, vol. 1, 67-76.

¹⁰⁴⁵ Ursula Henriques dubs this the argument for toleration from the "mere irrelevance" of the beliefs in question; Henriques, *Religious Toleration in England*, 201.

See e.g. Macaulay, "Civil Disabilities of the Jews," in *Critical and Historical Essays*, vol. 1, 296-7: "It is because men are not in the habit of considering what the end of government is, that Catholic disabilities and Jewish disabilities have been suffered to exist so long. We hear of essentially Protestant governments and essentially Christian governments, words which mean just as much as essentially Protestant cookery, or essentially Christian horsemanship....The points of difference between Christianity and Judaism have...no more to do with his fitness to be a magistrate, a legislator, or a minister of finance, than with his fitness to be a cobbler. Nobody has ever thought of compelling cobblers to make any declaration on the true faith of a Christian. Any man would rather have his shoes mended by a heretical cobbler than by a person who had subscribed all the thirty-nine articles, but had never handled an awl. Men act thus, not because they are indifferent to religion, but because they do not see what religion has to do with the mending of their shoes. Yet religion has as much to do with the mending of shoes as with the budget and the army estimates." The exemplary extended Victorian statement of this view also comes from Macaulay in his essay "Gladstone on Church and State," in *Critical and Historical Essays*, vol. 2, 430-503.

¹⁰⁴⁶ Bagehot, "Parliamentary Reform," 207, 201.

suffrage¹⁰⁴⁷; the Whiggish, variety-of-suffrages sociologist perceived the singularity and originality of their thought as a reason both for including the working classes and for restraining their numerical predominance over other classes, for discovering the means whereby “the lower classes are to be admitted to a share of political power without absorbing the whole power.”¹⁰⁴⁸ At the risk of stating the point in overly provocative fashion, we might say that the insistence on the extent of ideological division among the working class, when bound up too tightly with the assertion of continuity with the *status quo* distribution of beliefs among the already enfranchised strata of society, amounted to a liberal-pluralist version of the organic-hierarchical social philosophy of the Tory democrats.

To return to the main thread of this section: the argument about the current extent of heterogeneity among working-class beliefs and policy-preferences was a crucial element in the democratic response to the theory of the variegated suffrage, deflating the anxiety about the demographic advantage of the working classes leading to distortions of the Commons’s sociological accuracy and its inclusiveness of all the major streams of interest and opinion. This was not, however, the only form in which the thesis of the sufficient diversity of opinion among the working classes appeared. Unlike the preceding contention, this second form was not an empirical assertion about the present, but a predictive claim about the future distribution of opinions under a democratic franchise. This prediction was central to what is arguably the most important document of democratic theory from the mid-Victorian period, although it is sadly neglected in political theory today: the *Essays on Reform* of 1867, a collection of articles from a group of young scholars and professionals known as the “university liberals” which “not only favoured the extension of the

¹⁰⁴⁷ Such deferential democrats included not only Disraelian advocates of “Tory democracy” but also, and more controversially, moderate Whigs and middle-class radicals of the James Mill mold; see e.g. Russell, *English Government and Constitution*, 236 and James Mill, “Government,” in Mill, *Political Writings*, 41-2. On James Mill and deference, see Moore, *Politics of Deference*, 421-3.

¹⁰⁴⁸ Bagehot, “Mr. Gladstone,” 438.

franchise but expressed sympathy with the ideal of democratic government.”¹⁰⁴⁹ Among the contributors were Leslie Stephen, James Bryce, and A.V. Dicey before the days of their fame, as well as three other authors – Kinnear, Brodrick, and Cracroft – who have already appeared in this chapter. It was, for the political left of the decade, something of a showcase of rising stars.

This second, academic-liberal argument for the harmony of democracy with the priorities of the mirror theorists punted on the foregoing question of whether the working classes currently contained one or multiple viewpoints and agendas. Instead, it threw offered a forecast about the distribution of opinions among them *once they were granted the suffrage*. Dire prognoses of deliberative politics succumbing to a united lower-class ideology or the multitude’s blind submissiveness to demagogues were irrelevant, ran this line of argument, because one could not generalize from the condition of mass opinion under an exclusive franchise to its condition under a democratic one. Even if lower-class beliefs in the 1860s were homogeneous or (as some imagined) nonexistent, political participation could be trusted to produce the optimally diverse allocation of opinions.

This prediction was the offspring of the combination of two quintessential tenets of Victorian political thought. The first, which has been the object of much attention in this dissertation, was the idea that widespread ideological diversity was natural to modern, “civilized” societies like the England of their day; the second, touched on at several points in previous chapters (especially in ch. 4, section 3), was the deep faith in the educative power of political life. If the engagement with public affairs that followed receipt of the “public trust or duty” of the vote could be expected to call into play latent intellectual and moral faculties, to draw attention to an array of complex problems, to involve the mind in new and various modes of thought, it could accordingly be expected to increase diversity. Whatever unanimity existed among the working class up to the present time was thus best understood as an artifact of the intellectual dormancy which naturally

¹⁰⁴⁹ Harvie, *Lights of Liberalism*, 11. The book’s analysis of the *Essays* and their authors remains illuminating and has not been superseded. The ethos of academic liberalism was treated in ch. 2 (1)(c).

attended political exclusion. Consequently it was wrong, as Leslie Stephen wrote in his installment for the *Essays*, to fear that democracy would unleash workingmen simply to impose their desires, for once they had the vote and sent their own members to parliament “they would have to discuss these questions before the whole nation, instead of fighting in the dark; the whole intelligence of the country would be brought to bear upon their claims and detect their unsoundness: the mere putting them into shape and discussing them would infallibly bring out the differences among the workmen themselves.”¹⁰⁵⁰ The conservative-turned-popular reformer Lord Houghton was likewise confident that the same kinds of thoughtful divisions of political allegiance and principle that characterized the then-current political classes would come to exist among the working class: “diversities of thought” would emerge among working men once they were brought within the pale of parliamentary discussion – “in proportion as [the newly enfranchised citizens] are taught to argue” and “have learned to think on such subjects,” Houghton averred, “their inductions will be various, and their conclusions contradictory.”¹⁰⁵¹ “Great differences of opinion,” wrote R.H. Hutton, a close friend of Bagehot who nonetheless opposed him on the franchise question, were sure to be an important part of working-class politics.¹⁰⁵² In short, division, diversity, fragmentation, contestation – these phenomena were intrinsic to politics itself, rather than peculiar to any particular governmental forms or electoral arrangements. The deliberative political culture that was so valued by the exponents of the variegated suffrage was in no danger from democracy, for the nondemocratic electoral arrangements they lauded had never in fact been the cause of the enlightening interplay of different views that had saved England from the “monotony” and “uniformity” that afflicted the rest of the

¹⁰⁵⁰ Leslie Stephen, “On the Choice of Representatives by Popular Constituencies,” in *Essays on Reform*, 122.

¹⁰⁵¹ Richard Monckton Milnes, 1st Baron Houghton, “On the Admission of the Working Classes as Part of Our Social System; and Their Recognition for All Purposes as Part of the Nation” in *Essays on Reform*, 64.

¹⁰⁵² Hutton, “The Political Character of the Working Classes,” in *Essays on Reform*, 43.

world.¹⁰⁵³

The dynamic and future-oriented nature of this second strand of argument for diverse democracy flipped the script on the way of conceiving of the relationship between enfranchisement and the holding of opinions described in chapter four. Whereas Bagehot, Greg, and authors of their ilk set the possession of opinions (and sometimes even of *distinctive* opinions) as the baseline for being granted the suffrage, the academic liberals behind the *Essays* believed that enfranchisement was itself a mechanism for creating opinions – and diverse ones at that. The former wanted the suffrage to reflect and react to the contours of public opinion; the latter viewed the suffrage as a generator of opinions and an engine for their fragmentation.

Separable from but complementary of these arguments about the current and future distribution of beliefs in the working class was a depiction of the intellectual character of the working class which often appeared alongside the former arguments. In diametric opposition to the bleak views of lower-class benightedness, closed-mindedness, and intolerance analyzed earlier in this dissertation, democrats portrayed the working classes as open-minded and tolerant. Frederic Harrison, the leading Victorian positivist, thought the working classes were unique in “being without class prejudice” and being “open to conviction” by the best ideas, from whatever quarter they may have emerged.¹⁰⁵⁴ Morley praised them for being “less hindered by fixed ideas than other classes,” and Hutton assured his readers that “no class is so tolerant of differences of opinion as they are.”¹⁰⁵⁵ From this perspective, the important issue was much less the distribution of opinions that prevailed or was going to prevail than it was the *kind of people* that workingmen were; even if a seemingly unquestioning unanimity endured for a time, this needed not be taken as indicative of stagnation or

¹⁰⁵³ MacCunn, *Ethics of Citizenship*, 159. See also Macaulay, “History,” in *Miscellaneous Writings of Lord Macaulay*, vol. 1, 268-9.

¹⁰⁵⁴ Harrison, *Order and Progress*, 147.

¹⁰⁵⁵ Morley, *Fortnightly Review* of July 1868, quoted in D.A. Hamer, *John Morley: Liberal Intellectual in Politics* (Oxford: Clarendon Press, 1968), 84; Hutton, “The Political Character of the Working Classes,” 42.

majority tyranny. When new breakthroughs and dilemmas occurred and new information was brought to light, argued these democratic reformers, the appropriate fissures and contestations would arise and the full range of perspectives be canvassed, because these consequences followed from the character of the British demos.¹⁰⁵⁶ *Contra* the likes of Maine, Lowe, and Bagehot, a political system in which the working class was the numerically predominant element would be no more (and probably less) inert and inhospitable to new ideas or diverse views than any preceding system.

Because these encouraging truths about the working class gave the lie to the image of democracy as a system of class rule or majority tyranny, these democrats of diversity could lay claim to all of the pacific and stabilizing benefits that the variety-of-suffrages school ascribed to its version of inclusivity and representativeness. The dire ruminations of conservatives like Alison on the social-political collapse that would follow the triumph of democracy and limit it to an “ephemeral duration” – the accusation that a system of electors, “composed...of a certain class of society” and “indifferent” to the “complaints” and “welfare” of “other bodies,” would bring about the “inevitable consequence...that the ejected classes become discontented, and public dissatisfaction goes on accumulating, till it terminates in a convulsion”¹⁰⁵⁷ – were utterly misleading. Since all citizens could truly conceive of themselves as participating in and represented by a democratic government, since “the feelings and wishes” of the whole population would find adequate reflection in a democratic political structure, democracy would typify “not only stability” but “strength.”¹⁰⁵⁸ A more democratic suffrage would shore up the political foundations of England, for “political representation is the soul of political safety.”¹⁰⁵⁹ Houghton gave an eloquent articulation of the thesis

¹⁰⁵⁶ As Acton put it, in a slightly different context: the “real working class is more receptive to ideas and principles” than other classes; quoted in Roland Hill, *Lord Acton*, (New Haven, CT: Yale University Press, 2000), 96.

¹⁰⁵⁷ Alison, “The Reform Bill,” 16.

¹⁰⁵⁸ Bryce, *American Commonwealth*, vol. 2, 275.

¹⁰⁵⁹ Cracroft, “The Reform Session of 1866,” 78.

of democratic stability. No political innovation could serve better as “a security for the common support of the Law and Public Order” than the democratization of the franchise, which brought all “passions working in the popular mind” into “the free atmosphere of political debate”; democracy was unrivalled as “a security against the sudden and violent ebullitions of social discontent,” for it “afforded a legitimate safety-valve of political discussion [that] can hardly be overlooked.”¹⁰⁶⁰ “Democratic institutions” gave everyone a “share” of the political representation, making it possible that all citizens could “give their wishes a legitimate expression through [the Constitution’s] ancient organs.”¹⁰⁶¹ Democracy’s credentials for inclusivity and representativeness were matchless, and it was therefore the best bet for achieving a stable and peaceful future for Britain.

On every front, then, democracy was a better instrument for realizing the mirroring ideal and its attendant goods and values than the electoral engineering efforts of the variety-of-suffrages school. To subscribe to descriptiveness and mirroring was, in the eyes of these adherents of what we might call *diverse democracy*, to commit to democratic institutions, for the facts about the demos’s congeniality to diversity rendered groundless the long tradition of anxieties about its classist and unrepresentative nature.

Before leaving this section, a word on the afterlife of this cluster of diversity-friendly democratic arguments is in order. The last quarter of the century witnessed the increasing orientation of British politics around class antagonisms, the rise of a more spiritually-laden egalitarianism with the spread of Idealism, and the fading of the schemes of variegated suffrage into the past, and with these trends the stress on pluralism and disagreement within the working class subsided. Yet the legacy of this particular piece of democratic doctrine lasted beyond its mid-Victorian heyday and demonstrated a surprising tenacity. Take, for example, the gloss which D.G.

¹⁰⁶⁰ Houghton, “Admission of the Working Classes,” 51, 54, 52.

¹⁰⁶¹ Bryce, “The Historical Aspect of Democracy,” in *Essays on Reform*, 273.

Ritchie put on democracy. Briefly, this was that the nature of the political sphere was to be an arena in which different individuals and groups advanced different visions of and programs for their society, and that a democratic political sphere would not fail in this regard – rather, it would be superior, for it was the only completely inclusive regime, the only one which made space for every possible dissenting voice, which was open to every movement that might arise. Ritchie, as briefly alluded to in chapter two, was one of the first British theorists to attempt to derive the freedoms of the press and public discussion from the ideal of democracy itself; unsurprisingly, he did not expend so much theoretical energy for liberties which he expected to do no more than sit sterilely on the books. So long as “the right of freedom of speech and freedom of association” was respected, then “it is the very chief advantage of democracy over oligarchy that, while it establishes the power of the majority, it puts that majority potentially in the hands of those who have ideas and are able to make them spread.”¹⁰⁶² Democracy, properly understood, was the *open* system; it was, according to Harrison, the sole one which alone warranted the confidence that all new projects and ideas, which by definition originated with “minorities,” had a fair chance to “convert” the rest of society to “a reasoned concurrence” and to contend for the “real preponderance of the social force.”¹⁰⁶³

An even more direct instance of the power which this connection of a diverse demos with the possibility of democratic descriptive representation retained over later democratic thought occurs in an unlikely place: the socialist theory of Ramsay MacDonald, Britain’s first Labour Prime Minister. For MacDonald, as for all socialists, democracy was wrongly conceived in an “individualist” mode as an aggregation of personal preferences.¹⁰⁶⁴ Surprisingly, however, he also claimed that it was equally misunderstood as the government of *a class*, for “no class, however enlightened, can then

¹⁰⁶² Ritchie, *Principles of State Interference*, 73. It is not a coincidence that Ritchie was a committed opponent of PR, for this celebration of democracy as fundamentally the political system in which the position of the majority is liable to be conquered by contending groups and causes was a staple of anti-proportionalist writing.

¹⁰⁶³ Harrison, *Order and Progress*, 100.

¹⁰⁶⁴ MacDonald, *Socialism and Government*, vol. 1, 91.

represent the whole community.”¹⁰⁶⁵ Democracy was, instead, founded on the fact that at a “particular stage of [a society’s] evolution” it became impossible to attain an “accurate representation of the State personality,” a “complete representation of experience in the State,” without relying upon universal suffrage.¹⁰⁶⁶ In this epoch of complexity, differentiation, and multi-facetedness in social relations, only democracy could deliver the inclusiveness and descriptive accuracy in representation that could make the Commons an epistemically robust “deliberative assembly”:

it is not the idea of equality which I see underlying the democratic franchise, but the recognition of the value to the State of the experience of the individual, or perhaps, to speak more accurately, of the section of the community to which an individual belongs. For it is not individuals but classes and descriptions of individuals that are admitted from time to time to the franchise.¹⁰⁶⁷

Democracy was, in short, the appropriate political response to the modern sociology of diverse opinion; it was, in contradiction to the theory of the variety of suffrages, the latter’s true institutional corollary. For the greatest socialist politician of the early twentieth century, the democratic suffrage was the fulfillment in the modern era of the traditional British promise of a “mirroring” Commons.

2) Radical or Undescriptive Democracy

There was another pro-democratic line of argument in which diversity was a prominent player. This line was a more radical departure from the sociological-mirror framework than the foregoing. The clash between the proponents of the kind of democratic argument surveyed in the preceding section and the full-blown champions of the variety of suffrages from chapters four and five such as Bagehot, Grey, and Cole was basically a family squabble. Hence the former might be considered a Whiggish school of democrats: they shared the same ideal as their opponents – that is, Bagehot’s ideal of “true Liberalism” as “hav[ing] the largest number of really organic interests and

¹⁰⁶⁵ Ibid., vol. 1, 47.

¹⁰⁶⁶ Ibid., vol. 1, 46, 61.

¹⁰⁶⁷ Ibid., vol. 1, 110, 50.

ideas meeting together in the representative assembly, to try each other's strengths and weaknesses"¹⁰⁶⁸ – but disputed the assessment that a democratic suffrage could not operate in accordance with this ideal. In this sense the difference between a Houghton and a Cole was one of species more than of genus; “diverse democrats” existed on the far end of a continuum that reached, at its other end, to the likes of Greg or Macaulay, who combined subscription to the ideals of diversity and sociological accuracy within the assembly with a belief that fidelity to these ideals meant a suffrage that privileged the middle-class. Democrats like Houghton were, at bottom, the inclusive wing of the broad descriptive tradition of representation that had undergone such varied institutional permutations and theoretical articulations since the days of its Whig inception.

One democratic response to the theory of the variegated suffrage was, then, to show that the values that animated the theory would be best served by abandoning the electoral-parliamentary institutions usually thought to instantiate them. Yet another, the one to which we turn now, was to dismiss the sociological claims that underlay this way of thinking as inappropriate to modern politics. This response was not always clearly distinguished by democratic publicists from the former, and could sometimes be found alongside the previous one – indeed, this appears dramatically in the *Essays on Reform*, where the essay by Houghton which we have been discussing was followed immediately in the next chapter by a quite distinct case for democracy from Albert Venn Dicey.¹⁰⁶⁹ While these two positions came together, of course, in their practical recommendation of a

¹⁰⁶⁸ Bagehot, “‘True Liberalism’ and Reform,” 360.

¹⁰⁶⁹ In *Essays on Reform*, Houghton's essay was the third chapter, and Dicey's “The Balance of Classes” was the fourth.

It should be noted that Dicey himself assented *en passant* to the picture of a working class that contained a range of political viewpoints, though this assessment of the ideological dividedness of the lower classes was not central to his essay: “But if it be alleged that tyranny is specially to be feared where numbers are supreme, there seems to be little proof for the allegation. In all countries the majority must be a fluctuating, unknown, indefinite body, which has neither the will nor the power to act with systematic tyranny. In England especially, where classes are intermingled, and where it is absolutely impossible to draw a clearly marked line between the different divisions of the nation,—where, for instance, it is hard to say what are the limits of the so-called middle class,—it is highly improbable that the whole of the poor (and it is only when acting as a whole that they could in any case be supreme) would act together as one man in opposition to the wishes of all those who are not technically working men. For the so-called working class is, like all others, notoriously broken into divisions”; “Balance of Classes,” 74.

democratic franchise, the reasons for their dissatisfaction with the alternative offered by theorists of the variety of suffrages differed fundamentally.

Dicey would wind up as “eminent” a Victorian as any who would be subjected to Lytton Strachey’s scorn, and would spend the latter decades of his life in disillusionment with his country’s democratic politics (especially its economic and imperial dimensions).¹⁰⁷⁰ He would achieve fame as England’s greatest constitutional scholar, and his *Law and Public Opinion in the Nineteenth Century* continues to exercise great influence on the historiography of the period. But in the mid-60s all that remained in the future, and Dicey was still zealously democratic, even in comparison to the crop of fellow reform-minded young intellectuals who contributed to the *Essays*.¹⁰⁷¹

One important prong of Dicey’s offensive against the mirror view, and the one which concerns us here, was in effect an internal critique. Dicey wanted to show that, even should one accept the accurate reflection of classes, interests, and opinions as the correct parliamentary *ideal*, assent to this ideal could not produce a satisfactory institutional settlement. To do this, he insistently pressed the point that we saw even the occasional Whig, such as Bagehot and Harris, concede in chapter four: namely, that the resolution of the sociological question – of what the condition of society and public opinion was in “the English nation here and now,” as Bagehot wrote¹⁰⁷² – was hardly a straightforward one. Answering this question was, the reader will recall, the first order of business for theorists of electoral variegation. After all, the variety of suffrages was not meant to be instituted at random, with, say, different voting rules and qualifications allocated by lottery across constituencies. Such a method of random allocation was unacceptable because there was no reason

¹⁰⁷⁰ Strachey famously poured scorn on the values and self-image of the Victorian era in his *Eminent Victorians* of 1918. For Dicey’s political trajectory, see Richard Cosgrove, *The Rule of Law: Albert Venn Dicey, Victorian Jurist* (London: Macmillan, 1980).

¹⁰⁷¹ Morley called Dicey’s essay “the most unflinchingly democratic” of the collection; quoted in Smith, *James Fitzjames Stephen*, 108.

¹⁰⁷² Bagehot, *English Constitution*, 306.

to imagine that a haphazard distribution of voting privileges would produce an electoral result faithful to public opinion. Therefore, it was necessary that some definitive account of the makeup of public opinion – of which regions, which classes, which ideas contributed with what significance to the makeup of the national mind – precede the assignment of the various suffrages to the different constituencies. But any such account would itself be contestable – and not just *contestable* but, indeed, *contested*. As we have seen, even two thinkers such as Bagehot and Greg who not only bore a family resemblance in their political thought, but who actually belonged by marriage to the same family, disagreed about the relative importance of the various classes in England and the adequacy with which they were being represented. The very fact about the British social order with which Bagehot and so many of his like-minded contemporaries were preoccupied – that the public opinion which, by general consent, was the supreme authority of modern British politics was itself a split and multi-faceted entity, an amalgam of many different streams of thought and interest – made arriving at any such conclusive account a rather fanciful conceit.

This was the core of Dicey's objection to the so-called "principle of the English constitution, that Parliament should be a mirror."¹⁰⁷³ Much as the designer of a variety-of-suffrage scheme might be confident that his proposal had more "reality" in it than either the "sham" that was the "present system" or any contending scheme, much as he might be certain that his plan to divide the seats of the largest urban constituencies, and only those constituencies, evenly between the upper and working classes was "founded on reason and justice,"¹⁰⁷⁴ the fact remained that quite other notions of what the composition of the Commons would have to be in order to qualify as a "reasonable and just" mirror were prevalent. Dicey had no patience for the idea that the exercise of "political reason"

¹⁰⁷³ Dicey, "The Balance of Classes," 67. Dicey was quoting here from a speech of the conservative politician Hugh Cairns.

¹⁰⁷⁴ Cole, *The Middle Classes and the Borough Franchise*, 40.

alone could produce such a mirror,¹⁰⁷⁵ and he directed at such pretensions his most withering prose:

Advocates of class representation have expended immense ingenuity in devising schemes for effecting an hypothetical balance of power, and the complexity of these devices has given an appearance of philosophic profundity to the theory which makes such devices necessary; for it is difficult for any one to believe that an object which needs thought and ingenuity for its attainment may, after all, not be worth attaining. But calm observers, though willing to give all due weight to the objections which may be urged against the representation of numbers, may yet be inclined to suspect that thinkers who advocate the establishment of a balance of power, entertain views open to greater difficulties than are the theories which these thinkers assail.¹⁰⁷⁶

However confident those of Cole's mold may have been that the picture of society which undergirded their prescriptions for reform was the right one, their schemes were nonetheless "open to a primary charge of utter impracticability" resulting from the absence of consensus about the "weight and importance" of the discrete elements of society.¹⁰⁷⁷ Dicey dwelt at length on this theme:

Their object is to give "due" weight to each interest, but no standard exists by which the "due" weight may be measured. Mr. Disraeli is honestly convinced that the landed interest has not its due share of power. Most other persons would think a diminution of the influence of the country gentlemen essential to the establishment of a fair constitutional balance; but there exists no test by which to decide between the correctness of Mr. Disraeli's views and the views of his opponents, unless principles be introduced which are fatal to the theory of the balance of power [of the various classes and interests].¹⁰⁷⁸

Dicey, who, like almost all liberals of his age, was bullish about the burgeoning social sciences, did not mean to suggest that there was no fact of the matter about the relative contributions of different "orders" of society to the nation's social, intellectual, and economic life.¹⁰⁷⁹ His point, part-political, part-epistemological, was that there was no uncontroversial *criterion* by which "persons of opposite views, such as Mr. Mill and Mr. Disraeli, could be brought to agree on the exact proportion of

¹⁰⁷⁵ Holyoake, *Liberal Situation*, 14.

¹⁰⁷⁶ Dicey, "Balance of Classes," 75-6.

¹⁰⁷⁷ *Ibid.*, 76, 65.

¹⁰⁷⁸ *Ibid.*, 76. Dicey's attack on a fair balance of interests is formally identical to Marx's critique, eight years later, of those schools of socialism which invoked the principle of a "fair distribution of the proceeds of labour": "What is a 'fair distribution'? Do not the bourgeois assert that the present-day distribution is 'fair'?...Have not also the socialist sectarians the most varied notions about 'fair' distribution?"; Marx, *Critique of the Gotha Program*, in *The Marx-Engels Reader*, ed. Robert Tucker (New York: Norton, 1978), 528.

¹⁰⁷⁹ Dicey, "Balance of Classes," 78.

influence which ought to be retained by the landed, commercial, and working classes.”¹⁰⁸⁰ In the face of these disagreements, Dicey believed, any plan of reform which depended on its acceptance as *the* means of reflecting the truth about modern English society in all its diversity must be unsatisfactory.

Dicey had no affection for the “mirror” principle, and did not contemplate with regret the imminent passing which he expected for it. But even in his essay one gets a sense of a sort of romantic tragedy about the theory which he was assailing. While he lamented that the “principles” of his antagonists “tend in practice...to the establishment of a Plutocracy,” he did not think that the mirror theory was a cynical cloak for upper-class power-hunger, and he was in any case uninterested in such *ad hominem* arguments.¹⁰⁸¹ Instead, even this theory contained (to use the lingo of the era) a “partial truth.” This was the respect for diversity and the conviction that including it within Parliament was advantageous: “An argument of real force...is that the introduction into the legislative body of members belonging to different orders of the community would tend greatly to improve the character of the legislature. No candid critic can deny that there is some truth in this allegation.”¹⁰⁸² Proponents of the variety-of-suffrages/mirroring position observed, valued, attended to the diversity in their societies; they developed a serious theory of the epistemic and policymaking benefits which diversity produced; they were guided by a desire to do justice to the various elements of the polity. But they never squarely faced the objection that wide swathes of their countrymen might dispute their assessment of the shape of the “public.” Though they celebrated and sought to give expression to the true state of society and public opinion in all its diversity, they did not recognize the diversity of opinions that existed with respect to this state itself, and the theory to which they subscribed lacked the resources to address the contentions arising from this second-

¹⁰⁸⁰ Ibid., 77.

¹⁰⁸¹ Ibid., 78.

¹⁰⁸² Ibid., 72.

order diversity.

This was the deep difficulty, and the tragic aspect, of the variety-of-suffrages theory. That it was very responsive to the conditions of “modern diversity” gave it great appeal and normative power in an age absorbed with these themes, but this diversity to which it was so attentive would always render its prescriptions contestable and unsatisfying. Only a society that was divided and diverse would need such careful planning to do justice to all parties. But a divided society was precisely the kind of society in which it was least likely that agreement on the exact contours of these structures would be found. Whiggish theorists of representation assumed that unanimity could be found at this second-order level – at the level at which each theorist was painting his own picture of society – while first-order diversity persisted. The essence of Dicey’s critique was to expose the implausibility of this assumption.

Dicey added a further dimension to his critique: the temporal. In a manner that reminds the modern reader of Nozick’s argument that the exercise of liberty over time inevitably disrupts patterned theories of distributive justice,¹⁰⁸³ Dicey allowed *arguendo* that somehow a consensus that bridged the social and ideological divides in Britain could be reached. A consensus of this sort, could, however, only be fleeting and was therefore of little permanent benefit: “such an agreement would be as worthless as it would be illusory; for in politics nothing is more certain than that it is impossible to predict how political and social forces will adjust themselves under a new Constitution.”¹⁰⁸⁴ This mode of theorizing, which relied on imprinting a “stereotype” of the social-intellectual order of society on the legislature, was utterly unbefitting of political thinkers who rejected static notions of society in favor of a (in Dicey’s eyes, true) developmental, evolutionary

¹⁰⁸³ Nozick, *Anarchy, State, and Utopia* (New York: Basic Books, 1974), 160-4.

¹⁰⁸⁴ Dicey, “Balance of Classes,” 77.

perspective.¹⁰⁸⁵ This was a powerful persuasive maneuver, since, as noted in earlier chapters, at least the more ardent Whigs among the champions of the variegated suffrage were committed to a deeply progressive social thought. Dicey delivered the *coup de grâce* with the claim that, had Whigs genuinely adhered to their mirror theory, their greatest legislative achievement, the First Reform Act, would have died on the vine: “Had it been deemed requisite to ascertain beforehand what would be the exact amount of weight given by the Reform Act to each section of society, Gatton and Old Sarum might still be sending up Members to Parliament.”¹⁰⁸⁶ It was a fanciful piece of self-flattery on the part of Whigs to ascribe their success in 1832 to the country’s approval of the law as an instrument for creating a prospectively accurate image of society; rather, the country had embraced the Reform Act for more pedestrian reasons, because, in a time of crisis, it promised to expunge great and obvious evils. In short, Dicey was not only convinced that in modern, diverse, progressive nations, consensus on the image of society that was to be transplanted into the legislature was improbable; he was also convinced that even if one could suspend disbelief and conceive of this improbability being momentarily overcome, the consensus reached would shortly become outdated and, hence, an unfit basis for representative government.¹⁰⁸⁷

¹⁰⁸⁵ Ibid., 77. In Victorian debates on representation the worry about “essentialism” which appears in modern discussions of descriptive representation was absent, although the resistance to “stereotyping the social” expressed here does come close. For instances in the modern literature, see e.g. Phillips, *The Politics of Presence*, 55, 106; Jane Mansbridge, “Should Blacks Represent Blacks and Women Represent Women?” 638. Robert Paul Wolff’s argument that postwar American pluralism imprinted a “frozen” picture of society on political discourse is really no more than an expansion of Dicey’s concern beyond the electoral-parliamentary sphere; Wolff, “Beyond Tolerance,” in *A Critique of Pure Tolerance* (Boston: Beacon Press, 1965), 41-7.

¹⁰⁸⁶ Ibid., 77. Gatton and Old Sarum were two of the most notorious rotten boroughs of the unreformed parliament.

¹⁰⁸⁷ A temporal aspect entered into Dicey’s article in another way. In keeping with the historical bent of his inquiry into the success of toleration in England, Dicey could not refrain from injecting a remark on the broad sweep of British history. If the sociological premises on which a representative scheme for mirroring discrete elements was founded were, as a theoretical point, always contestable, they reached a heightened pitch of implausibility in modern society: “In a society such as that of the Middle Ages, where marked orders existed, representation by orders, with all its disadvantages, arose, as it were naturally, from the surrounding condition of civilization. In a society like that of modern England it is difficult to find the orders on which laboriously to build a scheme of class representation. Take, for example, a class frequently mentioned in political discussions, that of the £10 householders. What, after all, is the real community of view or interest, which binds the members of the class together? They are of different politics; they pursue different professions; they belong, in many cases, to different religious bodies. Looked at in one point of view, they may be called

Dicey's essay was, by my estimation, the most pointed articulation of the thought that the prevailing theory of representation was doomed by the very diversity which it sought to represent accurately. But he was not alone in making this critique, even in the *Essays*.¹⁰⁸⁸ His fellow *Essayist* George C. Brodrick made the same accusation in his own reform writings. "The relative importance of these mysterious aggregates ["classes" and "interests"] is ordinarily measured, not by reference to any independent standard, such as numbers, wealth, or intelligence, but by the weight which the individual writer may be disposed to attribute to each, having regard to what he considers should be the predominant influence in Parliament," Brodrick had written in an 1859 essay.¹⁰⁸⁹ He restated the charge in the first chapter of *Essays on Reform*, there invoking as well the temporal dimension stressed by Dicey:

To know what is a just balance of classes, we must have determined beforehand what degree of weight each ought to possess in the State, and have solved most of the problems which it is the special function of a reformed Parliament to investigate. Not long ago, it was considered a fair distribution of legislative power that a few hundred noblemen should not only compose one estate of the realm co-ordinate with the Commons, but should also exercise, through relations and nominees, a preponderating influence in the popular branch of the Legislature....What appears to a landlord or employer "a just balance of classes," may appear the very reverse to an impartial critic, as well as to a tenant or artizan, especially if it has been adjusted on the monstrous supposition that the more numerous a class is, the more jealously should it be excluded from the franchise.¹⁰⁹⁰

Brodrick was much readier than Dicey to expose "the self-interest" which, according to him,

a class; looked at in another, they are a disconnected mass of different small classes....Who can say where the upper class ends, or where the middle class begins?"; *ibid.*, 81-2. While this historical angle was incidental to Dicey's main critique, in linking the decline of a society of orders to the difficulties of modern political representation he offers a kind of preview of the late-twentieth-century revival of liberal theory in France; reflection on the meaning of the end of a society of orders is central to the projects of Marcel Gauchet, Claude Lefort, and Pierre Rosanvallon.

¹⁰⁸⁸ Not all of the fellow contributors to the *Essays*, though, were comfortable with Dicey's critical line on the mirror theory. As was noted in the previous chapter, Bernard Cracroft was a true believer in the traditional mirror theory even as he supported Gladstone's bill to reduce the suffrage in both counties and boroughs. Consequently, in writing about the lessons of the *Essays* as a whole he felt compelled to downplay the severity of Dicey's attack in a way which dramatically distorted the latter's message; Cracroft, "The Reform Session of 1867," 162.

¹⁰⁸⁹ Brodrick, "The Principles of Parliamentary Reform," in *Political Studies*, 146.

¹⁰⁹⁰ Brodrick, "The Utilitarian Argument against Reform," in *Essays on Reform*, 7-8.

underlay the espousal of this theory of representation,¹⁰⁹¹ but like his co-contributor he recognized that the more fundamental theoretical problem was the inability to travel from the ideal of a truthful reflection of society to an incontrovertible sociology that could serve as a template for electoral regulations. All reform proposals that purported to “give to each [of the various elements of which the nation is composed] its proportionate weight and influence” and in consequence to actualize “that equipoise of conflicting forces which has come to be regarded as the capital problem of political dynamics” were guilty of “*petitio principii*.”¹⁰⁹²

Two Reform Acts later and in an England much closer to electoral democracy, the greatest philosopher of Dicey and Brodrick’s generation, Henry Sidgwick, would give their critical argument a central place in his own thinking about the suffrage. In the 1890s Sidgwick was certainly among the target audience for the revival (championed by Lecky) of the variety of suffrages, one of the dwindling contingent of thinkers who remained receptive to the general outlook of a mid-century Whig-liberal. Not only was he utterly resistant to admitting “any supposed ‘natural right’” to the vote,¹⁰⁹³ but he also placed a high value on the epistemic advantages of diversity and retained the strong Millian fear of parliamentary tyranny of the majority under a democratic suffrage.¹⁰⁹⁴ Nevertheless he found the objection from contestability, indeterminacy, and second-order diversity insurmountable. Indeed, he generalized the Dicey-Brodrick critique, in a way that they had not

¹⁰⁹¹ Ibid., 7.

¹⁰⁹² Brodrick, “The Principles of Parliamentary Reform,” 145, 147.

¹⁰⁹³ Sidgwick, *Elements of Politics*, 377.

¹⁰⁹⁴ “But good legislation is a result more likely to be attained in a representative assembly in which such class-interests are fairly balanced, as each class is more open to sound reason and impartial consideration of the common good where the interests of others are concerned. For this reason, as we have seen, a widely-extended suffrage involves a danger of a different kind: viz. that the ultimate interests of the whole community may be sacrificed to the real or apparent class-interests of the numerical majority of the electors, either through ignorance or through selfishness and limitation of sympathy”; *ibid.*, 389.

themselves done, to include all other forms of “electoral inequality,” such as plural voting.¹⁰⁹⁵ Any political theory built upon the principle of “due” representation – of giving “due weight” in the legislature to each class or group, or to attributes like wealth or intelligence – suffered from its inexact and ineluctably controversial character:

however fully we admit the general considerations above stated, any scheme for applying them must necessarily be to a great extent arbitrary: we have no means of determining, with any pretence to exactness, how much additional electoral power is due to wealth on account of the implication of social with private interests, or how much properly corresponds to any available evidence of probable superiority in political judgment.¹⁰⁹⁶

Such theories were doomed by what Sidgwick did not hesitate to call the “impossibility of a satisfactory criterion” for making the kinds of finely-tailored adjustments and gradations of the suffrage required for their realization.¹⁰⁹⁷

This lack of a criterion, this internal indeterminacy, had practical consequences. For instance, Sidgwick thought that schemes of representation based on such theories were liable, from the necessarily disputable and arbitrary-seeming quality of their prescriptions, to have a destabilizing impact: “any particular plan of electoral inequality will always present plausible grounds for agitation to modify the standards applied: while the interests of classes and parties will always supply strong

¹⁰⁹⁵ Ibid., 391. Similarly, Leslie Stephen felt that the problem of indeterminacy was sufficient ground for the dismissal of plural voting: “Of course it is totally impossible to find any proportion whatever” by which to regulate assigning “to the wealthy, and exalted, and intellectual people votes to correspond to the force which they ought to have...What Rule of Three will answer this question: – If John Smith has one vote, how many should Mr. Mill have?”; Stephen, “Reform,” 529.

Arguments for plural voting tended to, but did not always, appeal to considerations other than those of descriptive representativeness, such as the justice of giving greater influence to the educated or the greater stake in national prosperity of the propertied. But, as we saw in Harris’s comprehension of plural voting within a sociological framework in chapter three, it was perfectly possible to advocate plural voting as simply an alternate *means* to the locally variegated suffrage, or as one instrument among others, for realizing this strong notion of representativeness. (And it still is possible so to conceive it – even as committed a modern egalitarian as Charles Beitz is willing to entertain the use of methods of plural voting. For him they would serve the “compensatory” purpose of enabling a minority group to gain fairer representation; see Beitz, *Political Equality*, 157-8. In this as in other areas we are not as far from the undemocratic Victorians as we might suspect.) For another example of such a scheme, one analyzed at length by Mill, see James Lorimer’s *Political Progress not Necessarily Democratic and Constitutionalism of the Future*. For Mill on Lorimer, see “Recent Writers on Reform,” 352-8.

¹⁰⁹⁶ Sidgwick, *Elements of Politics*, 391.

¹⁰⁹⁷ Ibid., 392.

motives for such agitation.”¹⁰⁹⁸ But it was also a theoretical defect; in current philosophical parlance, we might say that Sidgwick criticized such theories for not being *action-guiding*. The injunction to produce a mirror of society or a just balance of classes was valueless because it did not provide rules for selecting among the diverse lights in which these phenomena could be reasonably regarded. “In considering balance of interests, it must be borne in mind that it is impossible to divide society into classes which remain identical and equally distinct for all legislative purposes”: hence it was eminently disputable whether the central “conflict of interests” around which the composition of the Commons needed to be oriented was that between the “‘agricultural’ [as] opposed to the ‘manufacturing’ interests,” or that “between manual labourers generally and their employers,” or perhaps that between “persons to whom fixed money-payments are due and the rest of the community.”¹⁰⁹⁹ As “we pass from one proposed law to another,” Sidgwick observed, “the important lines of division are continually changing,” and one of the lessons he drew from this fluidity and many-sidedness of political subjects was the foolhardiness of any aspiration to devise in advance a set of electoral-parliamentary structures that would reflect *the true* state of society.¹¹⁰⁰ A mirroring Commons was, to Sidgwick, at base not much more than a myth. The normative foundation of parliamentary authority had to lie elsewhere than in its descriptive accuracy.

These authors articulated a powerful critique of the mirror-sociological theory of representation, but it should be noted that in comparison to this critical project their own defenses of the normative superiority of democracy look scanty and suggestive. Indeed, much as this trio shared the perception of a theoretical inadequacy underlying the variety-of-suffrages position, it cannot be said that they shared a theory of democracy. There are several reasons for this. Sidgwick,

¹⁰⁹⁸ Ibid., 391.

¹⁰⁹⁹ Ibid., 391-2.

¹¹⁰⁰ Ibid., 392.

for one, can only with a great deal of contortion be classified as a democratic theorist, for he believed that unqualified adherence to any specific form of government was incompatible with the “utilitarian point-of-view.”¹¹⁰¹ The most that could be asserted was that while “the general arguments for a representative legislature lead *prima facie* to the inclusion of all sane adults,” in practice these reasons were defeasible by a host of factors.¹¹⁰² This did not mean that there was not much to be said for democracy. It did accord with the values of fairness and non-arbitrariness, and thus was not liable to provoke “a sense of injustice” in those groups who were excluded or whose impact was deliberately constrained¹¹⁰³; democratic electorates, for all their faults, did a “tolerably satisfactory” job of electing competent officials¹¹⁰⁴; and nondemocratic schemes were riddled with theoretical dilemmas, the reasoning behind them consistently “less plausible” for a “modern state.”¹¹⁰⁵ Yet he was alarmed by many features of his country’s nascent democracy, such as the tightening grip of party, and he was “perfectly happy to have his political-theoretical efforts understood as an attempt to marry the virtues of democracy with those of aristocracy.”¹¹⁰⁶ Sidgwick’s impression that nondemocratic applications of the descriptive ideal would be on the losing end when faced with democratic objections did not translate into any great keenness for the gains of democracy in his lifetime.

With Dicey and Brodrick the case is different. It is beyond the scope of this chapter to reconstruct their complete thought about democracy. But it does behoove us to consider one piece

¹¹⁰¹ Ibid., 379. This parallels exactly his and Fitzjames Stephen’s criticism (analyzed in chapter two) of the absolute conclusions of *On Liberty* for trespassing the “essential limits of the empirical utilitarian method”; Sidgwick, “Review of *Liberty, Equality, Fraternity*,” 293.

¹¹⁰² Sidgwick, *Elements of Politics*, 378.

¹¹⁰³ Ibid., 374.

¹¹⁰⁴ Ibid., 378.

¹¹⁰⁵ Ibid., 379.

¹¹⁰⁶ Ibid., 589-603; Bart Schultz, *Henry Sidgwick: Eye of the Universe* (Cambridge: Cambridge University Press, 591).

of their thought, or, rather, one lacuna in their thought. This is that, unlike Sidgwick, they made an immediate and essentially unargued leap from the rejection of descriptive representation to the acceptance of democracy. Why did they simply assume that the demonstration of the difficulties of contestability and arbitrariness that afflicted schemes developed on the traditional mirroring ideal amounted to an argument for democracy?¹¹⁰⁷ After all, in purely theoretical terms a plan for appointing a monarch or an assembly via lottery would have been just as immune to the objections that they lodged against the programs of variegated suffrage.

My responses here will be somewhat speculative, since it is difficult to give a sure explanation for the absence of an argument. I think, however, that we can give a few tentative answers. First, in equating the rejection of the variety-of-suffrages framework with the embrace of democracy, Brodrick and Dicey were in effect taking up the debate where their opponents left it. Greg framed the reform issue as a choice between sociological schemes and the “universal suffrage, which all deprecate,” and Cole confronted England with the choice between a plan such as his own and “the condition of universal suffrage.”¹¹⁰⁸ If the terms of the public debate were already that democracy or a system of variegated suffrage were the only options available, then democrats did not need to take on the extra work of showing the correctness of this binary.

But there are two other, more substantive reasons for this feature of their thought. The first is that they seem to have sided with the social contract tradition rather than with Burke on the question of the politically primordial character of majority rule.¹¹⁰⁹ One can glimpse in Brodrick and

¹¹⁰⁷ Brodrick, like Dicey, would end his life much disillusioned with the march of British democracy, mostly due to the movement for Irish home rule; see Harvie, *Lights of Liberalism*, ch. 9.

¹¹⁰⁸ Greg, “Representative Reform [1],” 507; Cole, *The Middle Classes and the Borough Franchise*, 73.

¹¹⁰⁹ For Burke’s famous argument about the conventionality and unnaturalness of majority rule, see *An Appeal from the New to the Old Whigs*, in Burke, *Further Reflections on the Revolution in France*, ed. Daniel Ritchie (Indianapolis: Liberty Fund, 1992), 164. For the contractarians on the foundational character of majority rule, see Hobbes, *On the Citizen*, ed. Richard Tuck (Cambridge: Cambridge University Press, 1998), ch. 7, §5; Locke, *Two Treatises of Government*, ed. Peter Laslett (Cambridge: Cambridge University Press, 1960), II §95-6.

(especially) Dicey the thought that democracy was simply the default mode of politics, and that rather than continue on with what they took to be an “utterly impracticable” series of attempts to bring the country into agreement on a “fair constitutional balance,” it was preferable to have recourse to the default option.¹¹¹⁰

The second, and I think more important, reason for their treating it as self-evident that refutation of the descriptive ideal meant the triumph of democracy was that their attack on the variety-of-suffrages school was, in their minds, more than just a contest of one institutional vision against another. It was also something like a defense of the political sphere against encroachments on its terrain:

To divide citizens, therefore, into classes, and to marshal them according to their comparative claims to power, simple as it seems, is to undertake the responsibility of deciding beforehand in what proportions the great political jury is to be packed, and thereby virtually to anticipate their verdict.¹¹¹¹

Inherent in the accusation of arbitrariness was the worry that implementing one of this slew of mirroring schemes would prevent decisions about the nation’s trajectory from being made in a truly collective manner. However “captivated” many of his contemporaries were “by the idea of Parliament being a mirror of the nation,” that theory rested on the unacceptably apolitical “assumption that theorists can sketch out the future of the nation.”¹¹¹² Perhaps the best (though a somewhat anachronistic) way to put it is that, for Dicey and Brodrick, democracy was envisioned as a way of moving the scene of the action from the sociological to the political. The representative system was no longer to be thought of as an arena for addressing the questions, “What does society

¹¹¹⁰ It is worth noting explicitly that, in contrast to much recent Anglophone democratic theory, Dicey and Brodrick were operating with a minimalist notion of democracy. For Dicey, *democracy* consisted of the acceptance of two simple premises: first, that the equal treatment of “persons,” rather than a weighing of classes, ought to be the building block of political representation; second, that, if “supremacy” has to reside somewhere for political life to exist, the least objectionable and controversial place to locate it was in the “majority.”

¹¹¹¹ Brodrick, “Principles of Parliamentary Reform,” 146.

¹¹¹² Dicey, “Balance of Classes,” 84.

look like? How do we weigh its various elements? What is the shape of public opinion?,” but rather as a set of structures that enabled citizens to come to an authoritative collective decision about what they as a nation wanted, about the direction in which the country should head. In championing democracy, they believed that they were championing a true political process against the deformations of politics that had prevailed in the recent history of Britain.

Before concluding this section, a final word ought to be said about this line of Victorian democratic theory. In the critiques of the mirror theory of representation by Dicey, Brodrick, and Sidgwick there is observable a phenomenon familiar in the history of political thought: if extremes did not quite meet here, they certainly approached one another. For both these democrats and the Tories who had opposed the First Reform Act shared a strong sense of the arbitrariness of projects to “reform” parliament without inaugurating “democracy.”¹¹¹³ But while for democrats of the second half of the century this arbitrariness was a philosophical defect, a proof of the inadequacy of the underlying theory to provide a normative foundation for representative government, for Tories of the first half this arbitrariness was not so much a philosophical as a practical problem. The former group claimed that the incoherence and indeterminacy of the sociological ideal proved a democratic suffrage to be the only theoretically-sound basis on which a modern parliament could rest; the latter group predicted that, if the suffrage were treated not as a near-infallible and undesigned product of national history and tradition but as an object of policy which could be revised to suit discrepant political agendas and social viewpoints, then this change of political outlook would lead inevitably to democracy. A crucial plank of the anti-reform Tory platform was that “the Whigs were opening a door that could not be shut,” that “the least modicum of reform” would bring “ultimate democratic consequences” and “open the floodgates to democracy.”¹¹¹⁴ Whigs denied any such unavoidably

¹¹¹³ For more on the rhetoric of these plans, see Saunders, “Democracy,” 143, 151-2.

¹¹¹⁴ Pole, *Political Representation in England*, 498; Southgate, *The Passing of the Whigs*, 16. See also Gash, *Politics in the Age of*

democratic telos implicit in their policy of reform, and they did so, as we have seen, for a compelling reason: namely, because they denied any necessary connection, practical or conceptual, between representative government rightly understood as anchored in descriptive representativeness and the democratic franchise.

This was one of the central axes of the Tory-Whig struggle leading up to 1832. Whigs argued that in amending the traditional electoral map to bring the Commons into accord with the recent preeminence of the middle class, they were engaged in an improvement of the representative dimension of the British Constitution in response to objective social facts about the disaccord between parliament and the public at-large. Tories replied that piercing the armor of the organic perfection of the Constitution would leave any non-democratic electoral arrangements constantly exposed to the charge of arbitrariness regarding the limits of the suffrage they erected, whatever they might be. In 1831 our prolific Tory Archibald Alison pronounced it fantastical of Reform Whigs to imagine that they could articulate “grounds of justice,” acceptable to those who would be left unenfranchised, for the boundaries of the suffrage which they intended to draw.¹¹¹⁵ To the Tory mind, the resistance to reform measures guided by a descriptive ideal was not so much that they *were*, in the theoretical sense, arbitrary, but that they could not help but *look* arbitrary and thereby serve as “a stimulus to further agitation” that would put Britain “on the highway to universal suffrage.”¹¹¹⁶ From this perspective, the critiques of Dicey, Brodrick, and Sidgwick were the inevitable theoretical expressions of the psychology of discontent with the electoral system which Tories predicted would prevail, and prevail *with good reason*, in the aftermath of 1832. Hence the unreformed Tory was the

Peel, ch. 1. A classic statement of this view is Peel’s speech of 3 Mar. 1831, cited at ch. 3, note 507.

Tocqueville saw the issue in the same light: that tampering with suffrage rights would inevitably lead to electoral democracy was “one of the most invariable” of the “rules that govern societies”; *Democracy in America*, vol. 1, 64. And see above, ch. 3, note 616.

¹¹¹⁵ Alison, “The Reform Bill,” 43.

¹¹¹⁶ Aytoun, “Reform Measures,” 373.

ideological neighbor, and almost the ally, of a certain style of Victorian democrat, for they both resisted the endeavor to remake parliament in the hope of perfecting its sociological reflectiveness.

Conclusion

Chapters four and five of this dissertation revealed the power of the mirror theory of representation and its institutional complement, the variety of suffrages, directly by showing the amount of energy which went into their elaboration. This chapter reveals their appeal indirectly, but no less strongly. Advocates of democracy in the decades of the great debates which culminated in the expansions of the suffrage of 1867 and 1884 combatted not simply the self-interested ideologies of oligarchs or the traditionalist reverence for the ancient constitution transmitted across generations of Britons. Instead, they had to contend with a school of thought about representation whose *liberal*, *representative*, and *deliberative* credentials were formidable. In this setting, it was an urgent task for democrats to arrive at an understanding of the relationship between the widely-extended franchise which they preferred and the vision of representation which animated so much of the political philosophy and institutional design of the mid-Victorian period.

To the extent that Victorian democratic theory was forged *against* the variety-of-suffrages position, it faced the burden of overturning the widespread sense that this rival institutional scheme was the appropriate response to the social and ideological diversity which was such a preoccupation of the age. This effort involved taking one of the two paths surveyed above. The first path, followed by those who felt it imperative to prove that the values of diversity and deliberation were on their side, was to argue that a democratic suffrage was consistent with – or, on the stronger versions of the claim, that it was the only institutional arrangement capable of realizing – the ideal of descriptive representation. The second was to show that the diversity which characterized modern Britain rendered arbitrary any particular instantiation of this ideal, and therefore that a widely-extended

suffrage was the fairest mode of electoral regulation.

Thus two distinct paradigms of democratic theory arose in reaction to the variety-of-suffrages model. One camp believed in democracy as an extension of the mirror theory which had inspired the theory of the variety of suffrages; the other viewed democracy as an alternative that was in fundamental conflict with the descriptive ideal. The former descended onto the terrain of sociology, and rested its case heavily on an empirical-causal analysis. The latter remained in the realm of theory, and indeed denied the relevance and normative desirability of bringing any sociological claims or criteria into the domain of political representation.

Interestingly, neither of these schools of Victorian democrats is well represented in contemporary democratic theory. While deliberative democracy has taken a more “institutional turn” of late,¹¹¹⁷ today’s theoretical landscape still remains far from the first strand of Victorian democracy outlined in this chapter. The conviction of a Houghton or Kinnear that the justifiability of democracy rested on a fine-grained set of empirical hypotheses – about the distribution of beliefs, the attitudes of different demographics toward the promulgation of new ideas, the character of the British demos, the effect of political inclusion on the beliefs of citizens – is foreign to the practice of much democratic theory today. To state the issue differently: in the Victorian era a democratic suffrage was the *endpoint* of deliberative-democratic argument, which involved a great deal of what we would now call social-scientific legwork; whereas today a democratic suffrage is often simply an *assumption* of the theory. Only thoroughgoing epistemic democrats occupy a position parallel to that of the *diverse democrats* of this chapter’s first section. Just as epistemic democrats seek to justify democracy before an independent criterion of correctness, so our first group of Victorian democrats sought to vindicate the practical operation of democratic electoral institutions in light of norms of

¹¹¹⁷ See e.g. the essays in *Designing Deliberative Democracy*, eds. Warren and Pearse; Dennis Thompson, “Deliberative Democratic Theory and Empirical Research,” *Annual Review of Political Science* vol. 11 (2008): 497-520; Archon Fung, “Recipes for Public Spheres: Eight Institutional Design Choices and Their Consequences,” *Journal of Political Philosophy*, vol. 11, no. 3 (2003): 338-367.

deliberation and representativeness that possessed a venerable nondemocratic lineage. In particular, deliberative democrats at the present moment frequently bypass what was the very onus of the argument for democracy in their Victorian forbears: namely, that universal suffrage in equal electoral districts could actually function in accordance with the standards of deliberation.

The second, anti-descriptivist camp of Victorian democrats would, I suspect, be even more marginal within contemporary democratic theory. As the current resurgence in descriptive representation indicates, a large swathe of political theory today does not share the Dicey-Sidgwick perspective that the commitment to democracy involves refraining from offering judgments about what the composition of the legislature – or other salient political institutions – should be; to put the point in nineteenth-century parlance, the intuitions about representation of many political theorists today are as much “Whig” as “democrat.” For although the characteristics which are thought salient from the standpoint of representation have shifted – we currently speak more of gender, racial, and ethnic categories than of class or “interest” as the focus of efforts to make politics more descriptively accurate – the structure of the thought is the same: that it is possible for the political thinker to give an account of the appropriate makeup of a legislature or similar body in isolation from the outcome of democratic elections. If the modern democratic theorist is comfortable stipulating that, say, the membership of Congress conform to her notion of a faithful reflection of society, the most radical branch of Victorian democracy was decidedly not. Indeed, to the Diceyan wing of the nineteenth-century democratic movement, this impulse was precisely what they thought they were resisting.

Chapter Six

Diversity *with* Democracy? The Invention of Proportional Representation and the Tradition of Representative Government

In 1914, more than four decades after entering the parliamentary reform fray on behalf of a democratized suffrage and now indisputably England's most venerable authority on the Constitution, Dicey wrote in unflattering terms of the condition of political thought in his lifetime:

In no part of English history is the tardy development of new constitutional ideas more noteworthy or more paradoxical than during the whole Victorian era (1837 to 1901). It was an age full of intellectual activity and achievement...but it was an age which added little to the world's scanty store of political or constitutional ideas.¹¹¹⁸

This appraisal was tendentious, to say the least, and stemmed more from the disillusionment with democracy and the Liberal party that dominated the last three decades of his life than from a disinterested survey of the history of ideas.¹¹¹⁹ In light of the past two chapters, however, there might appear to be some truth to his claim: despite the many new theoretical developments to which they had been subject, neither the variety of suffrages vision – which was anchored in the long historical legacy of the British electoral system – nor the idea of a widely extended suffrage *tout simplement* – which after all had American, French, and even (depending on one's view of the “ancient Constitution”) British antecedents – could easily meet Dicey's curmudgeonly baseline of truly “original” ideas.

The trouble for Dicey was that, even within the confines of the new introduction he had

★ A word on terminology is needed at the outset of this chapter. In political science a contrast is typically drawn between PR and “first-past-the-post” systems. However, this latter term is not strictly apposite to the British case before the Third Reform Act of 1884 which established single-member districts as the rule (more on this later). For the most part what had historically obtained would be better called a “first-and-second-past-the-post” system, since most constituencies had dual-membership. These were also not, strictly speaking, “majoritarian” electoral arrangements, since the candidates did not need to reach a 50% vote threshold to be elected. The best term to designate the British system in contrast to the proportionalist alternatives discussed here is therefore the most generic one: “plurality-rule.” I will try to use this term throughout, though the others mentioned may slip in from time to time; what is important, though, is to bear in mind that the fundamental dichotomy in this chapter is that between PR and plurality-rule.

¹¹¹⁸ Dicey, *Introduction to the Study of the Law of the Constitution*, eighth edition (London: Macmillan, 1915), lix.

¹¹¹⁹ See e.g. Ian Christopher Fletcher, “This Zeal for Lawlessness”: A.V. Dicey, *The Law of the Constitution*, and the Challenge of Popular Politics,” *Parliamentary History*, vol. 16, no. 3 (1997): 309-29.

written for the eighth edition of his textbook on constitutional law, he ran up against a vision of representation and electoral structure that was, by any measure, a notable innovation of the Victorian era.¹¹²⁰ For in addition to the sociological-engineering efforts of the schemes for a variety of suffrages and the schools of democrats outlined in the preceding chapters, Victorian political theory featured a third school of thought on representation which was oriented around the values of diversity, deliberation, descriptive representation, and inclusiveness. This was the theory of personal or proportional representation developed by Thomas Hare. In support of and reaction against Hare's work emerged the most sophisticated set of reflections on representation in the latter third of the nineteenth century. Hare's theory, and the movement that emerged around it, are the subject of this chapter.

Dicey's downplaying of the originality of PR was motivated in part by his opposition to it – proponents of the scheme like Mill were more likely to herald it as a “great *discovery*.”¹¹²¹ Yet his failure to grant proper recognition of the place of PR in the history of British politics and political theory is indicative of larger trends that have continued to this day. Indeed, in British-centric scholarship PR has, oddly, been a victim of both its success and its failure. On the first front, the implementation of PR throughout Europe and beyond (a process which was already well underway when Dicey was writing¹¹²²) has made historians and political scientists less attuned to its *British* pedigree. On the second front, the failure of the movement for PR in Britain naturally inclines us to

¹¹²⁰ For Dicey's analysis of proportional representation, see *Law of the Constitution*, lxvi–lxxiii.

¹¹²¹ Mill, Letter to Thomas Hare, 19 Dec. 1859, in *CW*, vol. 25, 653.

¹¹²² “By 1920 Britain was the only democratic country in Western Europe not to have adopted some form of PR”; Peter Hain, *Proportional Misrepresentation* (Hants: Wildwood House, 1986), 4. On the history of the adoption of PR, see e.g. Andrew Carstairs, *A Short History of Electoral Systems in Western Europe* (London: George Allen & Unwin, 1980); Arend Lijphart and Bernard Grofman, *Choosing an Electoral System: Issues and Alternatives* (New York: Praeger, 1984). On the classification of PR systems across the globe, see Lijphart, *Patterns of Democracy, Government Forms and Performance in Thirty-Six Countries*, second edition (New Haven: Yale University Press, 2012), ch. 8.

imagine that it left less of a mark on British political theory than in fact it did.¹¹²³ Yet PR was a major theme of mid- and especially late-nineteenth-century British politics and political theory, and an understanding of the development of the theory of representation and parliamentary government demands that the ideas animating the Victorian controversy about PR be taken seriously.

Given its status as at once the innovation of the Victorian era most consequential to the conduct of modern representative politics and an understudied aspect of the political theory of the time, there are naturally many possible topics to take up. My inquiry here will be limited in various ways. First, I try to steer clear of simply recapitulating dominant themes in the contemporary political science literature on comparative electoral systems. Second, while a great deal of institutional nuance will be required, this chapter does not consider the formidable technical minutiae of PR such as the respective merits of the Hare, Droop, and Hagenbach-Bischoff quotas, nor does it enter into comparison of the many possible schemes of PR except where such comparison bears directly on our central themes.¹¹²⁴ Third, although it is of course difficult to draw a hard-and-fast line between party motivations and theoretical claims, I try to ignore simple partisan calculation about PR.¹¹²⁵ Fourth, and related to this last point, I am not giving a narrative history of the movement for

¹¹²³ Even rich and intellectually-informed histories of British politics in the mid- and late-Victorian periods often neglect PR entirely; see e.g. R.C.K. Ensor, *England 1870-1914* (Oxford: Oxford University Press, 1936) or, more recently, Angus Hawkins's excellent *Victorian Political Culture, 'Habits of Heart and Mind'* (Oxford: Oxford University Press, 2015). And see Floyd Parsons's remarks in the conclusion to his *Thomas Hare and Political Representation*, 186.

We should note, though, that even within the UK this failure is far from complete. Beyond the use of the limited vote (the credentials of which as a form of PR will come up later in this chapter) in three-cornered constituencies from 1867-84, Northern Ireland has used the Single Transferable Vote at various periods and still uses it for some local elections as well as for elections to the European Parliament, and STV was utilized for university seats for the House of Commons from 1918-45; see Pippa Norris, "The Politics of Electoral Reform in Britain," *International Political Science Review*, vol. 16, no. 1 (1995): 65-78.

¹¹²⁴ For excellent analyses in this vein, see Duncan Black, *The Theory of Committees and Elections* (Cambridge: Cambridge University Press, 1958), esp. chs. 10-1, 18-20; Enid Lakeman, *How Democracies Vote*, esp. chs. 4-7; Michael Gallagher, "Comparing Proportional Representation Electoral Systems: Quotas, Thresholds, Paradoxes, and Majorities," *British Journal of Political Science*, vol. 22, no. 4 (1992): 469-96; Kenneth Benoit, "Which Electoral Formula Is the Most Proportional? A New Look with New Evidence," *Political Analysis*, vol. 8, no. 4 (2000): 381-8.

¹¹²⁵ As political fortunes ebbed and flowed and the tide of events changed, STV was adopted and in turn disavowed by different parties across the spectrum from motives of partisan calculation; see Jenifer Hart *Proportional Representation: Critics of the British Electoral System 1820-1945* (Oxford: Clarendon Press, 1992), passim. As with the variety of suffrages,

PR in Britain¹¹²⁶; instead, while I will highlight some significant dates and attend where necessary to intellectual shifts over time, this is a conceptual and theoretical analysis that treats PR over the mid- and late-Victorian period as a relatively integral body of thought in contention with the other ideals of representation that we have so far discussed. (On this last point it is worth noting that this chapter extends further chronologically than the previous two, running more or less through the first decade-and-a-half of the twentieth century.¹¹²⁷ With regard to PR, the Victorian era extends into the Edwardian one: there was, in my view, a fairly cohesive set of references and arguments from Hare's major works until the First World War.¹¹²⁸)

The goal of this chapter is to consider the conceptual and institutional core of the Victorian theory of PR in light of the schools of thought on representation examined so far. In other words, it asks what kind of theory we should understand PR to be: an updated variant of an older, nondemocratic theory of mirroring; a subset of one of the democratic outlooks in the previous

PR was not the province of any one party. Unlike with the former, though, the question of whether PR was partisan in some direction or was neutral with respect to the distribution of parties itself (a question which is still with us today) was broached at a high theoretical level.

¹¹²⁶ The historiography on the subject is far from extensive, but see Hart, *Proportional Representation* and Parsons, *Thomas Hare and Political Representation*. I have benefitted a great deal from both of these works.

¹¹²⁷ The period around World War One was the high tide for PR's chances in the United Kingdom. In 1914 the Home Rule Bill included the single transferable vote for the Irish Senate and for some seats in the Irish Commons, though implementation of the law was suspended due to the outbreak of the war; upon gaining its independence, however, Ireland instituted STV. And in 1917 the Speaker's Conference on Electoral Reform recommended STV for around a third of the Commons, but the Representation of the People Act 1918, which established universal male suffrage and a measure of woman's suffrage, established it only for the university seats. See Hart, *Proportional Representation*, 176; Clarence Hoag and George Hallett, *Proportional Representation* (New York: Macmillan, 1926), 253.

¹¹²⁸ Chronologically, therefore, I am closer to Pippa Norris than to Floyd Parsons, as the former sees a "first wave" of PR-based reform roughly coextensive with what I have outlined here, whereas Parsons believes there is a quite sharp break after the collapse of the original Proportional Representation Society in 1888. See Norris, "The Politics of Electoral Reform," 69-71; Parsons, *Thomas Hare and Political Representation*, ch. 6.

Interestingly, there is something of a time-lag between the seminal theoretical texts of Victorian PR and the peak power of PR as a political movement. This is evidenced in the judgment of political scientist Herman Finer, that it was from the late-1870s or early -80s that PR had "received continuous and organised advocacy," even though in that time a "harmonious piece of political philosophy" on the topic was lacking; see Finer, *Fabian Tract No. 211: The Case Against Proportional Representation* (Westminster: Fabian Society, 1924), 3. As we will see, Finer certainly overstated the point – there were many theoretically rich treatments of PR, including some hefty tomes, during the period he indicated – but it is true that the height of PR agitation did not correspond with the appearance of the greatest texts on the subject, those of Hare and Mill, which had come earlier.

chapter; or a novel *sui generis* vision of representative institutions? This is, it should be said, only one direction from which PR can be approached, and I will analyze the multi-faceted debate surrounding the “moral” impact and practical consequences of PR in a companion chapter.

Before investigating the nuts-and-bolts of PR, it will be useful to familiarize ourselves with a few developments in institutional design that helped to lay the groundwork for Hare.

1) The Pre-History of PR in Britain

1859 was a landmark year for John Stuart Mill. This was the year in which one of the final and most important “modifications” of his “practical political creed,” which had been in an evolving state for “many years,” fell into place.¹¹²⁹ It was the year of *On Liberty*’s appearance. It is also the year in which this chapter’s story truly begins, and for the same reason – it saw the publication of the first edition of Thomas Hare’s *A Treatise on the Election of Representatives, Parliamentary and Municipal*.¹¹³⁰

With Hare’s book – and, even more, Mill’s enthusiastic advocacy of it once it had caught his eye – the debate on PR in Britain begins in earnest and takes on many of the characteristic features that it still maintains up to the present, such as the distinctive focus on the single transferable vote as the preferred proportionalist method.¹¹³¹ Proportional representation, however, did not commence in the late 1850s, and, depending on how one classifies certain authors, glimmers of the theory of proportional representation had both an American and Continental history anterior to Hare.¹¹³²

Indeed, not even the single transferable vote was original to Hare, although Hare was unaware of his

¹¹²⁹ Mill, *Autobiography*, 201.

¹¹³⁰ This text was not his first elaboration of his scheme; in 1857 he had released two editions of a much shorter work, *The Machinery of Representation* (both at London: W. Maxwell).

¹¹³¹ STV has been called the “‘Anglo-Saxon’ method of securing proportional representation;” see e.g. Vernon Bogdanor, *What Is Proportional Representation?* (Oxford: Martin Robertson, 1984), 76.

¹¹³² The first list system of PR was elaborated by the French Fourierist Victor Considérant; see e.g. Rosanvallon, *Le peuple introuvable*, ch. 4; Hart, *Proportional Representation*, ch. 1. The issue of how to categorize some of these early writings in the French context is touched on again below in note 1279.

antecedent at the time of formulating his scheme.¹¹³³ While we will leave the international dimension of PR's development aside, there was also a pre-history of PR in Britain, and something of this needs to be known not only for historiographical but also for conceptual purposes.

Beyond a common set of norms based in inclusiveness and deliberation, the variety-of-suffrages authors and the descriptivist democrats of our previous chapters were united by a particular vision of the relationship between the composition of the assembly and the *constituency*. While, as we saw, these figures could be remarkably imaginative with regard to the construction of constituencies, they remained tied to tradition in an important respect. This was that the accurate translation of social diversity which they sought was to emerge entirely from the interplay *between* constituencies. Diversity was transferred into the assembly because constituencies were *unlike* in relevant ways (suffrage rules, size, demographic distribution, ideological and socioeconomic factors). Thus, while what were essentially minority groups were able to place their spokesman in the Commons – the shipping interest, say, being represented via the borough of Whitby, or the Catholic interest via Arundel¹¹³⁴ – no minorities *as such* were represented.¹¹³⁵ Instead, minorities entered the assembly in virtue of constituting the majority at some point(s) on the electoral map; the variegated suffrage was therefore an exemplification of the practice of majority-minority districting elevated to a very high degree of sociological nuance and sophistication. What the variety-of-suffrages and descriptivist-democratic traditions lacked was an attempt to give representation to minorities *as they*

¹¹³³ Earlier in the decade, the Danish Minister of Finance Carl Christopher Georg Andrae had conceived a system of single transferable vote which was actually applied (though only briefly) for elections to the Danish Upper House; see e.g. Poul Andrae, *Andrae and His Invention: The Proportional Representation Method, A Memorial Work*, trans. Vaughn Meisling (Copenhagen, 1926); Salem Dutcher, *Minority or Proportional Representation: Its Nature, Aims, History, Processes, and Practical Operation* (New York: United States Publishing Company, 1872), 111.

¹¹³⁴ Hawkins, *Victorian Political Culture*, 92; Parsons, “*Ignis Fatuus vs. Pons Asinorum: William Gladstone and Proportional Representation, 1867-1885*,” *Parliamentary History*, vol. 31, no. 3 (2002): 374-385, at 376. Arundel remained a proprietary borough of the Duke of Norfolk, head of the most powerful British Roman Catholic family, even after the First Reform Act.

¹¹³⁵ As we will see in what follows, due to the multi-member nature of constituencies the situation was actually somewhat murkier and more complicated.

existed within the constituency. Put another way, to these writers the accurate reflection of society arose out of an assortment of discrete constituencies treated integrally; the diversity that obtained *internal to* the constituency was not a direct object of parliamentary inclusion.

While, as we will see later, it is a contested question whether PR should be understood as a form of “minority representation,”¹¹³⁶ before Hare’s innovations there had already appeared proposals under this label which had made the significant move of turning to the *inside of the constituency*, as it were, in the interest of securing the Commons’s fair reflection of diversity.

The shift beyond or beneath the notion of the representative order as a simple concatenation of independent constituencies was facilitated by an important fact about the English electoral system, one which has been touched on intermittently heretofore but not homed in on at length: namely, that the English constituency had historically been a multi-member one, with two-member constituencies obtaining almost universally before 1832, at which point they were accompanied by a growth in three-member constituencies that held during the classical age of British mid-century parliamentarism. These constituencies had always been regulated on what is now known as the “block vote,” that is, each voter possessed one vote for each seat to be filled in his constituency (two in two-membered, three in three-membered, and so on).¹¹³⁷ The block vote has come to be regarded as the electoral system with the greatest potential for “distortion” in representation as conceived from the modern perspective on proportionality as each party receiving seats in the assembly in an exact ratio to the percentage of the overall vote that it received. (How this modern perspective

¹¹³⁶ Hare, for one, disavowed the label “minority representation”; see e.g. Hare, *The Election of Representatives, Parliamentary and Municipal: A Treatise*, third edition (London: Longman, Green, Longman, Roberts and Green, 1865), 19; “Individual Responsibility in Representative Government,” vol. 4, no. 21 (1886): 350-8, at 350. Interestingly, his Danish counterpart Andrae was also firmly opposed to this term; Andrae, *Andrae and His Invention*, 27, 111.

Unless otherwise noted, references to the *Election of Representatives* will be to the third edition; it is, in my opinion, the clearest and best-written of the four editions, and there is not much substantive change between it and the final edition. Parsons charts the modifications the text received over its several iterations in his monograph.

¹¹³⁷ See e.g. Michael Steed, “The Evolution of the British Electoral System,” in *Adversary Politics and Electoral Reform*, ed. S.E. Finer (London: Anthony Wigram, 1975), 35-54, at 36. This predominance of dual membership had descended from the conventional mandate for counties to return two knights of the shire and boroughs to return two burgesses. The block vote is also commonly referred to as *scrutin de liste*, though this latter term was inconsistently applied by Victorians.

developed is, of course, one of the themes of this chapter.) The potential for distortion in this sense was increasingly recognized as the century wore on; typically for the English, however, this recognition owed much to their perception of the failures of this system on the Continent (esp. in Belgium, Switzerland, and naturally France),¹¹³⁸ as well as to a sense of the oddity that the *principle* of the block vote, if detached from the English system of a multiplicity of different districts suitably distributed to capture “the varied interests, opinions, and feelings of the entire community,” could yield outcomes that were strikingly unrepresentative by just about any measure, such as in a case where an entire country was defined as a single constituency and the contending parties were well-organized enough to furnish tickets containing enough representatives to fill every seat which could be voted for wholesale.¹¹³⁹ Yet, for most of the century, these worries could be set aside as speculative and, indeed, irrelevant even from a theoretical point-of-view: the block vote in multi-member districts did not conflict, even in principle, with the conventional view of the mirroring Commons, since the descriptive attributes of the system operated at the *inter-constituency* level; moreover, the variety-of-suffragist of the first two-thirds of the century was not especially concerned with *parties* as the object of descriptive attention, but rather with, as we have seen, some variation of “classes, interests, and opinions.”

Taking minorities in a strictly electoral sense, then, there was nothing intrinsically minority-friendly about the traditional British electoral system. Yet the multi-member character of these districts facilitated experimental thinking about the possibility of transmitting divisions internal to

¹¹³⁸ See e.g. Nassau Senior, “Lewis on Authority in Matters of Opinion,” *Edinburgh Review*, vol. 91, no. 184 (Apr. 1850): 508-58, at 545; Albert Grey, “Proportional versus Majority Representation,” *The Nineteenth Century*, vol. 16, no. 94 (Dec. 1884): 935-64, at 943-6. See also Carstairs, *Short History of Electoral Systems*, 12, 50-2, 138-40. It was in reaction to the perceived distortive, monopolistic character of the block vote that the United States banned multi-member districts for congressional elections in 1842; see e.g. Joseph Colomer, “On the Origins of Electoral Systems and Political Parties: The Role of Elections in Multi-Member Districts,” *Electoral Studies*, vol. 26, no. 2 (2007): 262-273.

¹¹³⁹ See e.g. Lewis, “Marshall on Minorities,” 227. Lewis used the thought-experiment of an assembly that was unanimously Protestant and composed entirely of members of one class (“landlords against tenants, capitalists against workmen”) to illustrate the strangeness of a national system in which *scrutin de liste* applied.

the constituency into the Commons.¹¹⁴⁰ Two such proposals are of particular import, both for the historical trajectory of PR and for ascertaining wherein exactly the distinctiveness of PR lies.

One of these – the later to be invented, but the less consequential for our purposes – is the cumulative vote. First systematically laid out a half-decade before Hare’s scheme by James Garth Marshall, a former Liberal MP, the cumulative vote was “a system of voting where each elector in a constituency having as many votes as there are representatives to be elected in his county or borough, and distributing his votes as he pleases, may at his option give one vote to each candidate, or accumulate the whole number of his votes in favour of one candidate.”¹¹⁴¹ Marshall desired three-member constituencies (although it is not clear if he settled on them simply for reasons of practicality; in any case he does not appear to have contemplated constituencies of more than four members¹¹⁴²); on his plan, the voter in a tri-cornered constituency could give his three votes in any (whole-number) portions which he desired, rather than being bound to give no more than one vote per candidate. The cumulative vote was centrally, therefore, a proposal to increase flexibility in the distribution of the traditional multiplicity of votes at the electors’ disposal; its mirroring aims, which

¹¹⁴⁰ Despite the increasingly firm conviction as the century passed of the anti-minoritarian impact of this system, it was possible to view the bare fact of multi-member districting, even with the block vote, as conducive to a kind of minority or descriptive representation, at least when certain conditions obtained (such as the absence of centralized, nationalized parties and the persistence of a kind of premodern political culture in which the return of members resulted largely from the negotiation of local rivalries and loyalties; see e.g. Gash, *Politics in the Age of Peel*, ch. 9; Philip Salmon, “The English Reform Legislation,” in *The History of Parliament, vol. 1: The House of Commons, 1820-1832* (Cambridge: Cambridge University Press, 2009), 374-412, at 383. In this vein it could also be argued that, though multiple membership *en tant que tel* had no special property of minority-inclusiveness, if one assigned the right number per constituency then any ill effects which the block vote might in theory possess would be avoided. It was this line of argument which the great economist Nassau Senior took up in favor of the extension of three-cornered constituencies as the bedrock of further reform, his thinking being that while local majorities were cohesive and organized enough to monopolize a double-member district, they were not sufficiently so to prevent any minority of real significance from claiming that third member: only “a very weak or very negligent” minority would fail to “carry[] one” of the three members and thus “secur[e] a fair hearing”; Senior, “Lewis on Authority,” 546. Three-and-a-half decades on, the Liberal journalist and MP Edward Russell would offer a similar defense of the block vote, although, in deference to the growth of disciplined parties, he set the number of members per district which would be resistant to dominance by the party of the local majority at six; Russell, “The Electoral Future,” *Contemporary Review*, vol. 47, no. 2 (Feb. 1885): 250-65, 252-3.

¹¹⁴¹ Marshall, *Minorities and Majorities: Their Relative Rights* (London: James Ridgway, 1853), 13-4.

¹¹⁴² *Ibid.*, 22, 29-36.

were central to Marshall's project,¹¹⁴³ were achieved by the removal of a formal constraint on the elector.¹¹⁴⁴ With this greater freedom came another benefit, one which Marshall rightfully highlighted as a distinctive "practical advantage" of his plan over rival (broadly construed) "descriptive" reforms – namely, that it enabled the elector to express in a clear way the intensity and not merely the fact of his preference for a candidate.¹¹⁴⁵ The cumulative vote was not without supporters of some prominence, with the aforementioned Third Earl Grey and (for a short time) John Stuart Mill among them, and it was implemented in a few places, including in Illinois (from 1870-1980) and in South Africa (the latter due to Grey's work as Colonial Secretary).¹¹⁴⁶ On the whole, however, it was not an especially impactful player at the level of parliamentary reform.

The second, earlier but more influential proposal was the limited vote, by which the elector in a multi-member district was restricted to fewer votes than the number of representatives to be returned. Classically, in the British context, this meant assigning two votes per elector in three-

¹¹⁴³ Ibid., 5-8.

¹¹⁴⁴ It should be noted that the bare fact of possessing two votes *but not being compelled to use them both* already granted a greater measure of freedom to the elector than exists in single-member constituencies; the British elector had always been free to "plump" (that is, use only one of his two votes) for a candidate to whom he wanted to show a special degree of support; see e.g. Hawkins, *Victorian Political Culture*, 212.

¹¹⁴⁵ Marshall, *Minorities and Majorities*, 13-4. It was this "expressive" value which, he claimed, made his scheme superior to the "single vote" (what is now normally known as the "single non-transferable vote," or SNTV), by which an elector in a multi-member (or even a single national) constituency would be allotted only one vote; the latter was, he admitted, "the same...in giving a justly proportioned weight to the opinions both of minorities and of majorities"; *ibid.*, 12-3.

This expressive, intensity-conveying value, it should be said, only obtains if voters display a wide range of behavior in distributing their votes; if, however, it becomes the norm for voters to give all of their votes to their first-choice candidate, then this characteristic of the scheme vanishes and it becomes basically identical to the SNTV. It was on this ground that Charles Lutwidge Dodgson (better known as "Lewis Carroll") rejected the cumulative vote: "The method of 'cumulative voting' will usually have no other effect than to increase the 'specific gravity' – so to speak—of a vote. Let each Elector have 4 votes, with permission to 'lump' them if he chooses, and in the end you will find most of the votes given in lumps of 4, and the result much the same as if each Elector had had *one* vote only. The conclusion is that *the* important point is to let each Elector give *one* vote only"; Dodgson, *The Principles of Parliamentary Representation*, in *The Pamphlets of Lewis Carroll, Volume Three: The Political Pamphlets and Letters of Charles Lutwidge Dodgson* (New York: Lewis Carroll Society of North America, 2001), 27.

¹¹⁴⁶ Grey, *Parliamentary Government*, 206-7; Coull, "The Third Earl Grey and Parliamentary Reform," 14; John H. Humphreys, *Proportional Representation: A Study in Methods of Election* (London: Methuen 1911), 69. Lecky favored the cumulative vote as a method by which hereditary peers would select representative peers as part of his plan to reform the Lords; Lecky, *Democracy and Liberty*, vol. 1, 461. It was also used for school board elections in England for a time. It was also used for school board elections between 1870 and 1902 in England.

cornered constituencies, or occasionally three in four-member constituencies.¹¹⁴⁷ More significant in the history of the Commons than the cumulative vote, Lord John Russell in his failed 1854 reform bill pushed for its application in forty-six districts, and he supported the amendment which eventually was included in the Second Reform Act by which it was implemented in twelve three-cornered constituencies and the City of London, which had four members.¹¹⁴⁸ This legislation was a landmark in the history of British electoral law, not only because it is the first (and, depending on one's view of STV, only) instance of minority representation for parliamentary constituencies, but also because of the practical and ideological significance it had for the theory and design of representative institutions in the following decades. This legislation was widely credited with spurring the growth of modern party discipline, for the creation of the Liberal Association or "caucus" by the Liberals of Birmingham was a direct response to what they perceived as the bias against advanced liberalism of the limited vote measure; the Liberal party in Birmingham strove for tighter organization and direction of supporters' votes in order not to lose the third seat to a Tory and divide the cities' strength as a bastion of Liberalism.¹¹⁴⁹ In consequence, the limited vote – though it was only in operation for a decade-and-a-half, going extinct of necessity upon the implementation of single-member districting in the Third Reform Act – helped to shape the political climate surrounding the discussion of PR, both by in fact contributing to the rise of new party conditions and, probably even more importantly, by the force of the impression that "minority representation" entailed "the caucus and...the practical despotism of the new political associations

¹¹⁴⁷ The first proposal of the limited vote came from the Tory poet W.M. Praed during the debate on the First Reform Act, proposing it for the few three-member constituencies that were included in the bill; Hart, *Proportional Representation*, 9-11; Humphreys, *Proportional Representation*, 62.

¹¹⁴⁸ Humphreys, *Proportional Representation*, 64-5.

¹¹⁴⁹ See e.g. Joseph Chamberlain, *The Radical Programme*, ed. D.A. Hamer (Brighton: Harvester Press, 1971), 6; Francis Schnadhorst, "The Caucus and Its Critics," *The Nineteenth Century*, vol. 12, no. 65 (July 1882): 8-28, at 13, 20; Woodward, *Age of Reform*, 188. For a dissenting interpretation that minimizes the role of hostility to the limited vote in the origins of the Birmingham caucus, see Trygve Tholfsen, "The Origins of the Birmingham Caucus," *Historical Journal*, vol. 11, no. 2. (1959): 161-84.

[that is, the party organizations].”¹¹⁵⁰

For supporters of STV, there was a kind of cruel irony in the fact that the limited vote had such an influence on the course of debate about voting systems since it was, in their eyes, obviously inadequate; as two early-twentieth-century American propagandists for STV summed up the disgust which the more ardent proportionalists had for some time felt for this measure: “That the limited vote should have been adopted for a considerable number of uses...where true representation was desired, is a good example of men’s astonishing laziness in these matters of voting.”¹¹⁵¹ These criticisms of the limited vote’s shortcomings from the perspective of “pure PR” were, however, somewhat wide of the mark, for they both over- and under-estimated the theoretical stakes of the nineteenth century’s first attempt to think about representation as involving not only the relations *between* but also *within* constituencies. On the one hand, the limited vote was never articulated as a comprehensive theory of representation; even in the most robust proposals for its use, such as Russell’s in 1854, it was applied as the exception rather than the rule. The limited vote was in this sense always an adjunct to the variety-of-suffrages vision of mirroring, a corrective to deal with the advent of larger districts for which more than the traditional two members were thought requisite. Since these districts, by virtue of their demographic makeup and greater populousness, were more heterogeneous than the traditional variegated constituencies which, in the history of British electoral theory, were closely identified with *a* specific interest or group rather than with multiple,¹¹⁵² the limited vote could be seen as merely remedial, inserted for a particular set of difficult cases, to

¹¹⁵⁰ Charles Seymour, *Electoral Reform in England and Wales: The Development and Operation of the Parliamentary Franchise: 1832-1885* (New Haven: Yale University Press, 1915), 501.

¹¹⁵¹ Hoag and Hallett, *Proportional Representation*, 44.

¹¹⁵² Although he does not directly connect this up with the endorsement of the limited vote, David Moore provides an analysis of Russell’s shift later in his career to greater favorability toward heterogeneous districts; see Moore, *Politics of Deference*, 325-6, 381-2.

preserve the overall working of the variety-of-suffrages method of descriptive representation.¹¹⁵³

Rather than a faltering, half-hearted step toward PR in the modern sense of *proportional reflection of the aggregate of individual preferences*, the limited vote was a mechanism for refining the accuracy of the kind of communitarian representation that the Whig *weltanschauung* had always prized in a way that better suited the newer, more cumbersome circumstances of large heterogeneous districts.¹¹⁵⁴ It was the variety-of-suffrages school pushed just to the point where it doubted the unimpeachable universality of its methods. It was not intended as a stepping-stone to a “one-man, one-vote” conception of the equality of the worth of each elector’s franchise.¹¹⁵⁵

Indeed, although its mode of operation, by turning inside the constituency rather than balancing among them, was opposed to the method of variegated franchises and constituencies, the line was actually blurrier than might be imagined at first blush. Earlier we encountered variety-of-suffrages schemes which incorporated class-specific constituencies; among these, let us take, for example, Cole’s. Cole, it will be recalled, wanted to divide many urban boroughs, giving one of the two members (two of the four in the case of the City of London), to the “Middle-Classes” and one to the lower classes. This method of class-based representation raises an interpretive question about how to categorize his scheme. Was the division of an existing territorial constituency on grounds of class the creation of a new constituency? or was it an exercise in restraining the number of votes in electors’ possession in a constituency that had retained its identity and integrality? For the most part, Cole presented his proposal as the former, and hence he belongs amongst the more creative

¹¹⁵³ Russell, *English Government and Constitution*, 240.

¹¹⁵⁴ For reasons that parallel why the variety-of-suffrages vision necessarily presupposed a preliminary sociological phase, the limited vote could not be seen as a device of mirroring on its own. The random allocation of three-cornered constituencies would not produce a descriptively satisfactory depiction of the array of “classes, interests, and opinions” unless one posited implausibly that all of these objects of representation were encompassed in a relatively stable 2/3-1/3 bifurcation of partisan allegiance. Therefore the limited vote had to be endorsed downstream of a sociologically-grounded distribution of different constituencies and suffrages.

¹¹⁵⁵ Although Marshall came closer than most; see e.g. Marshall, *Minorities and Majorities*, e.g., 14, 21.

adherents of the variety-of-suffrages school. But for the sake of shoring up his case, he was willing to consider it in the latter light as well, and he believed that even from this angle his reform was immune to objection:

The plan of all the electors no longer voting for all the members of their borough cannot with consistency be objected to, as against principle, by anyone who was a member of Lord Aberdeen's Government in 1854; for by the scheme of reform which Lord John Russell then introduced...it was proposed that in all cases where three members should be returnable by any county or borough, no elector should vote for more than two...¹¹⁵⁶

The class-specificity, and consequent improved sociological accuracy, of Cole's scheme was obviously amenable to classification as an installment in the long catalog of Old-Whig-through-Bagehot literature on the descriptive Commons. But it was also liable to a different gloss, to wit, as an early entry into a newer line of thought about representation, one less certain of its relationship to the traditional parliamentary notions and practices. The blurriness of the status of Cole's plan points to what will be a central theme of this chapter, namely, the difficulty of understanding where exactly the connections and disconnections between PR and the variety-of-suffrages view lay.

The way in which Cole sought to leverage the Whig ministry's vogue for the minority vote complicates, moreover, the distance which the champions of pure PR often wanted to put between their proposals and such thoughtless half-measures as the minority vote. For if class-specificity through bifurcation of extant multi-member districts could be seen as an instance of the limited vote in which the limitation was to *one* vote per elector rather than the standard two, then Cole's scheme was interpretable as a case not merely of the limited vote but of the "single vote" as well, and this fact showed, furthermore, that the "single vote" was simply a species of the larger genus that was the limited vote. The single vote in a multi-member district was the cornerstone of proportionality in the nineteenth century (as, in general, it remains today) – and yet, depending on the lens through which one chose to view Cole's contribution, here it was being advocated by an opponent of "Mr.

¹¹⁵⁶ Cole, *Middle Classes*, 66.

Hare” who self-consciously hewed to another vision of the electoral machinery underlying the representative Commons.¹¹⁵⁷ There were, of course, several dimensions on which Hare and Cole did not align – the transferability of the vote; the size of the constituency; and the voluntary or involuntary character of constituencies – and all of these could, depending on the author’s sensibility or the reformer’s objectives, carry great normative weight, as we will soon see. But however discrepant they might appear at first glance, Cole’s invocation of vocabulary of the limited vote, in which it appeared to be a cousin of *both* Bagehot and Hare, demonstrated that a bridge could be built over the space that separated longstanding British descriptivism from a system that was frequently cast as out of “conformity with good old English notions of representation.”¹¹⁵⁸

In contrast to these perceptions of the alienness of STV, proponents of both the limited and the cumulative vote sought to stress the continuity between their recommendations and the time-honored practices of British parliamentarianism.¹¹⁵⁹ (It was rather easier for the latter to do so than the former, the confinement of votes below the number of seats being judged a more marked straying from constitutional precedent than the increase in flexibility of apportionment of one’s votes.¹¹⁶⁰) Their goals were the same as those depicted above in chapters 3-4, and were expressed in nearly identical language.¹¹⁶¹ Yet not even as sanctimonious an admirer of the organic British constitution as Russell could pretend that minority representation was a straightforward extension of

¹¹⁵⁷ Ibid., 28.

¹¹⁵⁸ Russell, *English Government and Constitution*, 239.

¹¹⁵⁹ Marshall, for example, copiously cited Burke, Russell, Grey, and other weighty Whig authorities on the constitution. And he repeatedly played down the extent to which he was innovating: he was offering no more than a “simple change in the mode of voting”; his was not among the schemes which would be “opposed to our established habits and customs”; and so on. Marshall, *Minorities and Majorities*, 1, 4, 6, 13, 24.

¹¹⁶⁰ See e.g. Mill, “Thoughts on Parliamentary Reform,” 330.

¹¹⁶¹ See e.g. Marshall on such values as stability, inclusivity, the right to be heard in the assembly, and the epistemic advantages of diversity; *Minorities and Majorities*, 8-9, 11, 17.

previous constitutional practice.¹¹⁶² Before leaving these schemes behind, it behooves us to ask where exactly the discontinuity between them and their counterparts from chapter four lies.

Four areas of discontinuity are particularly noteworthy. These propositions are interrelated, and together they indicate the conceptual paths along which true PR would travel even farther.

The first is one on which we have dwelt already: the disruption of the integrality of the constituency. Minority representation violated, in Gladstone's words

the principle of Parliamentary representation [which] is, that we should recognize each constituency as being in itself an integer – as being in itself a community – and what we want in this House is to have the prevailing sense of the community. We do not want to have represented in miniature particular shades of opinion that may at the moment prevail in it, but the sense of the majority, which represents the whole community.¹¹⁶³

Both the limited and the cumulative vote were premised on the rejection of any such univocal “sense” of the community, and therefore amounted to a movement away from focusing on the assemblage of constituencies and toward the voters themselves as the direct object of representation.

The second is a decline of faith in virtual representation. Minority representation schemes were mechanisms for *getting more votes to count* toward the placement of a candidate in office.¹¹⁶⁴ This decline could take on two valences. On the one hand, it could indicate the irreplaceability of a particular cluster of electors to the overall sociological satisfactoriness of the Commons; for *these persons in particular* there were no equivalents to be found elsewhere in the nation such that the fact that they specifically did not place a spokesman in the Commons would not impair its representativeness. Given their focus on the populous, especially urban districts which were most

¹¹⁶² “If there were to be any deviation from our customary habits and rooted ideas on the subject of representation, I should like to see such a change as I once proposed, in order to obtain representatives of the minority in large and populous counties and towns”; Russell, *English Government and Constitution*, 240.

¹¹⁶³ Gladstone, Speech of June 15, 1870, 147.

¹¹⁶⁴ On “wasted votes” under first-past-the-post systems, see e.g. R.J. Johnston, “Seats, Votes, Redistricting, and the Allocation of Power in Electoral Systems,” in *Choosing an Electoral System*, 59-69. This motive was central to Greg’s support, noted above, for the cumulative vote; “Parliamentary Purification,” 622-3. And see Hart, *Proportional Representation*, 17. Greg was relatively rare in favoring the cumulative vote while not also simply writing off Hare as an impractical dreamer; see *Rocks Ahead*, 7-8.

likely to be granted more than two members, defenders of these schemes were in effect taking Mill's side in the dispute (depicted in chapter three) between him and Bagehot over whether the educated classes in the major cities were not of too special a sociological significance to have their chances of direct inclusion in the Commons be left to the uncertain outcome of electoral contestation with the working classes of the boroughs. This was, to be sure, a statement of the practical limits of virtual representation rather than an objection to the principle of it. But if such limitations proliferated then the whole system of virtual representation would unravel¹¹⁶⁵; for virtual representation to have any purchase as an element in an operating system of representative government, the demographic "blocks" to be included must be relatively few in number and uncontroversial in their boundaries. Put differently, because virtual representation rests on a basis of cohesive, identifiable groups, too finely-grained a sociology, by multiplying these groups and producing confusion about who belongs to them, would undercut the workability of the sociology on which the system is grounded.¹¹⁶⁶ (It is perfectly conceivable, for example, to believe in the *principle* of virtual representation and yet to reject its tenability on the grounds that, in a given state of affairs, every citizen is so unique as to resist any accurate grouping.¹¹⁶⁷) In any case, what matters for now is that one source of the discomfort with virtual representation evinced by minority-representation proponents was that it ran up against the practical difficulty that certain indispensable groups might be left behind by the (predominantly territorial) network of constituencies without the possibility of any effective ersatz for them being supplied by this system itself.

¹¹⁶⁵ The inverse relationship between how fine-grained and discriminating a political sociology is and the plausibility of claims of virtual representation would also be important for PR's attack on virtual representation, as we will see in section 2(a).

¹¹⁶⁶ Dicey's objections to the variety of suffrages apply here as well.

¹¹⁶⁷ This is close to the evaluation of the "crisis of representation" in late-twentieth/early-twenty-first-century democracies as Pierre Rosanvallon understands it; see e.g. Greg Conti and Will Selinger, "The Other Side of Representation: The History and Theory of Representative Government in Pierre Rosanvallon," *Constellations: An International Journal of Critical and Democratic Theory* (forthcoming).

On the other hand, the movement away from virtual representation – the desire for fewer votes to be “wasted,” for more electors to succeed in placing a representative of their choosing in the house – need not have stemmed from descriptive impulses. After all, it is easy to imagine an electoral system which, through judicious apportionment of constituencies and franchises, would achieve a high degree of descriptiveness while within each district the winning candidates were returned only by very small pluralities, thus wasting lots of votes.¹¹⁶⁸ Even while accepting the descriptive satisfactoriness of the system, one could still bemoan the waste of votes on other grounds, and could do so without having recourse to a “democratic” view that elections were devices for delivering the consent of every citizen without which government could not be legitimate.¹¹⁶⁹ Greg is, as usual, illustrative of the ideological possibilities available, since his thought on representation was such a hodgepodge of contemporary concerns. As noted earlier, Greg was mostly content with the Reformed Commons in its descriptive dimension, but he had a lower estimate of the intellectual virtues of MPs, and (like Mill) the cumulative vote seems to have been to him largely a way of getting men of greater “personal qualities” into the House.¹¹⁷⁰ In other words, what Greg objected to in the current “waste” of votes was that it contributed to an intellectually deficient assembly.

Although these perspectives were different, on both of them minority representation was cutting against the grain of thinking of representation as a “virtual” process and stepping toward the representation of “persons,” even if it was still a long way from a “democratic” adherence to the equal worth of each person’s vote. Simply thinking in terms of electoral majorities and minorities brought these authors closer to a “personal” view of representation, since – in contrast to “classes,

¹¹⁶⁸ Again, the *reductio* is instructive: some theorists favor lottery on descriptive grounds, and yet in a lottery there are of necessity zero “effective votes.”

¹¹⁶⁹ As we will see in what follows, Harean PR did not have a straightforward relationship to this line of thought.

¹¹⁷⁰ Mill, “Thoughts on Parliamentary Reform,” 330; see also Mill, Letter to Henry Samuel Chapman, 8 July 1858, in *CW*, vol. 15, 559.

interests, and opinions,” which were all construed as objects whose nature and value were irreducible to the verdict of simple “numbers” revealed at the poll – the units which make up electoral majorities and minorities can only be the electors as individuals.¹¹⁷¹ Thus, while an attraction to minority representation was (as we have seen) far from an abandonment of the commitment that “classes and not numbers are what we seek to represent,”¹¹⁷² the necessity inherent in minority-representation schemes of adopting the electoral outcome rather than an independent sociological criterion as the vantage point by which to assess the fairness of parliamentary representation marked a step toward an individualistic or democratic outlook on electoral structures.

A third implication, which is in fact a version of the preceding one, was that a citizen was only represented if one had voted for a winner; the non-voter and the enfranchised supporter of a losing candidate were equivalently ill-off from the standpoint of representedness. Two rejoinders were readily available in the period to this line of thought: (a) the orthodox theory of virtual representation of course held that the efficacy of one’s vote was immaterial to the question of one’s representedness because this question was to be answered by surveying the composition of the assembly to see if it contained spokesman for one’s social rung, economic interests, religious convictions, etc.; (b) the image of the integral constituency made represented-ness an attribute of belonging to an electoral community. These views were to some degree separable, though they tended to be held in tandem (as by Gladstone) and thereby to reinforce the impression of the manifold representativeness of the British arrangements; a citizen could be said to be represented by the members who shared his religion, his party, his occupation, as well as by the members elected for his locality, *without* having cast a vote for a single winner. But what was critical about the

¹¹⁷¹ This is really just another way of rephrasing Bernard Manin’s point that in representative democracies “minorities” and “majorities” are constituted by the procedure of the vote and do not exist apart from it; see e.g. Manin, “Political Deliberation and the Adversarial Principle,” trans. Greg Conti, *Daedalus*, forthcoming.

¹¹⁷² Greg, “Representative Reform [2],” 269.

equation of representedness with voting for a successful candidate was less the position itself as thus stated than the moral charge behind it. After all, as noted above, even Bagehot had allowed that the sort of durable intra-constituency minority status that he expected for upper-class citizens in the boroughs to which he would grant universal suffrage was akin to “disfranchisement.” What separated the thoroughgoing variety-of-suffragist from the champion of minority or, even more, proportional representation was therefore less an analytic or conceptual dispute than a moral judgment. For Bagehot, the entirety of the matter of the adequacy of a system of representation was to be resolved at the level of the overall economy of descriptiveness and deliberativeness; the electoral fortunes of any particular cluster of individuals was as such a matter of moral indifference. And this indifference was brought under fire by all minority or proportional representation schemes.

The fourth and final point of difference between the conventional notions of descriptive representation and Marshall’s and Praed’s style of reform is subtler, more of a tendency than anything approaching an absolute break. Nevertheless it is as momentous as any of the preceding. This is the shift toward (a) parties as a primary object of representational concern and (b) the accuracy of the reflection of party strength as a leading metric for evaluating the quality of representation. While variety-of-suffragists were of course not indifferent to parties, in their work parties appeared more as practical devices that assisted in organizing political activity (especially within the confines of the legislature; this was a kind of vestigial Burkeanism) than as entities the accurate reflection of which itself formed part of the task of the representative machinery. With minority representation, on the contrary, party affiliation was, in a new sense, what the electoral regulations were hoping to get at: via minority representation “we might have a *Liberal* country gentleman sitting for Buckinghamshire, and a *Conservative* manufacturer for Manchester.”¹¹⁷³ It is not

¹¹⁷³ Russell, *English Government and Constitution*, 240, my italics.

This shift is visible even within an author’s oeuvre: Russell, Greg, and Grey, for instance, tended to speak of classes and interests when they were operating in the variety-of-suffrages framework but to emphasize parties when they

that classes, interests, and other “objective” sociological categories fall out – they do not – but that parties now join them in a new position of prominence as a *potential object of representation in themselves* which they did not have on the variety-of-suffrages view. This increase in the attention given to parties and their entrance into the realm, so to speak, of primary objects to be reflected in the assembly would have profound ramifications, not least because of the ambiguity surrounding their standing relative to the aforementioned categories that constituted the traditional subject matter of the representative system. Were parties *replacements* for those earlier objects of representation? or were they merely means by which these were now organized? Were parties neutral, or perhaps even beneficial, to structuring the multifarious streams that made up public opinion? Or did they have a distorting effect on the representative process? These are dilemmas which ran through the whole of the literature on representation in the last third of the nineteenth century; for now, it behooves us to make an observation about what was involved in the more prominent role played by parties.

First, the turn to parties marked a prioritization of *opinion*. This was, again, not a decisive breach with the variety-of-suffrages school – at least not with its major strands – so much as a more explicit recognition of a logic contained within the latter. Chapter four showed that, with the exception of Harris’s sort of medieval organic functionalism, “classes, interests, groups, etc.” were ultimately meant to be tracked by the representative system because they could be expected to correspond to differences of perspective; this was what was meant by the ascription of an “ideational” or “cognitivist” component to the variety of suffrages.¹¹⁷⁴ However, for various reasons this privileging of opinion for the most part remained latent; hence writers like Bagehot’s fondness for indiscriminate jumbles of terms like “sentiments, wants, desires, needs, classes, interests, opinions, regions.” Yet with parties the case was different – they were not (though of course they

were in the rarer, minority-representation mode.

¹¹⁷⁴ On this point Rosanvallon has written eloquently; *Le peuple introuvable*, ch. 4.

might be correlated with or interpreted as expressing) sociological facts. Rather, they existed only in the free assent of their members for the explicit purposes of winning elections and influencing legislative conduct, and therefore they could not be understood to exist except as rooted in opinion. To take parties seriously as the objects of representation was to accept that it was in the last accounting the *ideas* of the citizenry to which a parliamentary assembly was meant to be faithful, since parties were constituted solely by the allegiance of electors.¹¹⁷⁵ It is easy to underestimate the significance of this change, especially because the older sociological language persisted alongside the newer one of parties and opinions, but its importance is evident from the following: while the “working-classes” could be thought to exist independent of their members’ sense of belonging to it, a “working-class party” certainly could not. Consider the difference between the way in which Bagehot, through reflection on the state of society and public opinion, determined that in certain regions of the country “labour” had come to have distinct political sensibilities meriting inclusion in the Commons and went about engineering electoral structures to incorporate them, and the way that minority representation, later in the century, would think about electoral justice to the Labour party consisting in its possessing seats in accord with its national vote share. In this respect, even if it was very much undertheorized in these embryonic forms, the cumulative and limited vote both had deeply democratic ramifications insofar as they put a dent in the traditional Whig sociological apparatus.¹¹⁷⁶

¹¹⁷⁵ See e.g. Marshall’s preference for the compound “parties and opinions” to describe what it was his system would represent in improved fashion: “the fair and proportionate representation of the various political parties or opinions”; “the mechanism of the elective process should be such as to allow all parties and opinions to be fairly represented in the House of Commons”; “any party or opinion” should be enabled to secure “proportionate representation”; *Minorities and Majorities*, 5, 8, 12. More generally, while “interest and opinion” appear coupled together in Marshall’s text in a rather standard manner, “class” is seldom invoked. That he recognized opinion as the grounding element of his system also shines through in several places: “a justly proportioned weight to the *opinions* both of minorities and of majorities”; provision had to be made for including “sufficient diversity of *opinion*”; *Minorities and Majorities*, 13, 19 (my italics).

¹¹⁷⁶ In this they resemble both the radical democrats of the previous chapter (almost all of whom opposed minority and proportional representation) and a later, mostly Continental school of radical democracy which embraced PR and which insisted on its anti-sociological character as a core dimension of democracy; see e.g. Hans Kelsen, *General Theory of Law and State* (New Brunswick, NJ: Transaction, 2006), 298.

Like the variety-of-suffrages paradigm, which was holding strong into the 1860s and beyond, the schemes we have examined so far in the chapter did not vanish upon the appearance of Hare's proposals in the late 1850s; indeed, as noted above, the greatest legislative success of these pre-PR systems occurred with the inclusion of the limited vote as part of the Second Reform Act in 1867. But with the arrival of STV the standing of these schemes in public debate altered. While of course there were exceptions who continued to believe in the cumulative or limited vote as a first-best option, on the whole those who wanted to depart from the traditional model came to see these schemes as stepping stones to "Mr. Hare's system of personal representation" which were in themselves simply "insignificant makeshift[s]."¹¹⁷⁷ Moreover, after 1867, with electoral democracy appearing increasingly imminent, public attention to STV grew. Two causes in particular provoked intense interest in STV in the late-nineteenth and early-twentieth century. First, the Third Reform Act, which inaugurated single-member, equal districts, was understood to spell the demise of the variety of suffrages as a realistic option for reformers who desired "variety in the representation."¹¹⁷⁸ Consequently, with electoral variegation as previously interpreted off the table in the eyes of most authors and the earlier models of minority representation conceived as halfway houses on the way to a more "perfect" method,¹¹⁷⁹ late-Victorian generations looked more and more to STV as the most practically plausible and theoretically sound corrective to the danger of majority "swamping." Second, the turmoil in Ireland and prospect of Irish Home Rule or independence generated fear that without PR the Protestant loyalists (who were a minority) might be rendered voiceless upon further expansion of the Irish franchise.¹¹⁸⁰

¹¹⁷⁷ Mill, Speech on the Reform Bill [8], 5 July 1867, in *CW*, vol. 28, 207. See also Henry Fawcett, *The Leading Clauses of a New Reform Bill* (Cambridge: Macmillan, 1860), 22.

¹¹⁷⁸ Albert Grey, "Proportional versus Majority Representation," 935-7.

¹¹⁷⁹ Lecky, *Democracy and Liberty*, vol. 1, 267.

¹¹⁸⁰ George Shaw-Lefevre, a critic of PR, admitted that Ireland was a great argumentative coup for his opponents; see

With this historical outline in place, it is time to turn to the institutional details of PR as they stood in the period. For our purposes, what needs to be presented is Hare's version. There are almost infinite permutations of PR, as there are of electoral systems in general,¹¹⁸¹ and the proliferation of schemes of PR had a detrimental impact on the fortunes of proportionalist reform in Britain.¹¹⁸² Yet Hare's program stood out from the rest as "that which has obtained more support in this country and the British Dominions than any of its rivals"¹¹⁸³; and beyond the numerousness and illustriousness of its supporters, it had an advantage in setting the terms of debate in Britain by virtue of being both the first to take the field and being perceived as a native growth. Other schemes of PR, consequently, did not dislodge the primacy of Hare's scheme even as the years rolled on from its birth. This continuing priority was also due to the fact that the most active pressure group for PR, the Proportional Representation Society, sponsored Hare's plan.¹¹⁸⁴ While Hare was amenable to changes in certain technical features of the scheme, such as the manner of calculating the quota, and

"The Representation of Minorities," *Contemporary Review*, vol. 45 (May 1884), 714-33; at 727. See also J. Parker Smith, "Parliamentary Reform: Minority Representation," *Westminster Review*, vol. 121, no. 241 (Jan. 1884), 163-75, at 165; Ted Bromund, "Uniting the Whole People: Proportional Representation in Great Britain, 1884-5, Reconsidered," *Historical Research*, vol. 74, no. 183 (2001): 77-94, at 82. And see above, note 1127.

¹¹⁸¹ Bogdanor, *What Is Proportional Representation?*, 46; Reeve and Ware, *Electoral Systems*, 4, 6.

¹¹⁸² Hence the humorous complaint of a leading proportionalist a half-century after Hare's debut: "There are said to be some 300 systems in existence, and the ingenuity of inventors shows no sign of exhaustion. The unkindest thing that a proportionalist can do is to invent a system; unfortunately the joys of paternity often outweigh the call of an ascetic devotion"; J. Fischer Williams, *Proportional Representation and British Politics* (London: John Murray, 1914), 30. See also, Jones, *The Politics of Reform, 1884*, 99-100.

¹¹⁸³ Williams, *Proportional Representation and British Politics*, 30; Lakeman, *How Democracies Vote*, 111. And see note 1131 above.

¹¹⁸⁴ In the British context the single nontransferable vote, the party list system, and the method of "clubbing" in which the candidate disposes of his surplus as he sees fit, all had to be advanced self-consciously as alternatives to the single transferable vote; see respectively Percy Greg, "Redistribution: Right and Wrong Directions," *National Review*, vol. 2, no. 12 (Feb. 1884): 807-23, at 818-23; James Meredith, *Proportional Representation in Ireland* (Dublin: Edward Ponsonby, 1918), xiii-xiv; Dodgson, "Parliamentary Elections," in *Political Pamphlets of Lewis Carroll*, 158-9.

while he could contemplate bending on some matters for the sake of political expediency,¹¹⁸⁵ its core elements remained stable.

Despite his centrality to the debate, Hare's own presentation of the scheme in *The Election of Representatives* was far from limpid, and this contributed to a widespread impression that PR was confused and unintelligible.¹¹⁸⁶ *The Election of Representatives* was a forbidding tract, unsuited to capture the attention of a wide audience. It was at once both a professional legislative document – it contained a bill in thirty-three clauses in painstaking legalese – and a rigorous, lengthy exposition of the normative ideals of representative government, and these dimensions were interspersed with one another. Furthermore, the institutional essentials of the proposal were laid out in conjunction with a truly stunning array of claims about the benefits that would flow from its enactment, and so the intrinsic difficulty of understanding the functioning of his novel arrangements was compounded by the fact that the institutional components tended to get lost within the expanse of moral and political claims made on its behalf. These facts about STV *chez Hare* are important (and they will structure much of our subsequent analysis) because they point to an important truth: that Hare believed himself to be elaborating not merely a plan of electoral reform but, even more, a theory of politics.

In consequence, there developed during Hare's lifetime a subgenre within the PR literature, namely “the clarification of Hare” pamphlet. To grasp the key pieces of Harean STV, let us use take one of these, composed by the great Liberal MP and economist Henry Fawcett,¹¹⁸⁷ as a kind of

¹¹⁸⁵ See the alterations made for the fourth edition to adjust the scheme to the Ballot Act of 1872 (London: Longmans, Green, Reader, & Dyer, 1874), 124-6. Like Mill, Hare had been opposed to the introduction of the ballot; see *Election of Representatives*, third edition, 139-45.

¹¹⁸⁶ See e.g. the verdict of a writer very sympathetic to Hare's scheme as the “most logical and satisfactory method”: “the principles of his scheme appear in so highly elaborated a form in his own writings, that his system is vaguely regarded by most people as a theory of incomprehensible complexity”; J. Parker Smith, *University Representation* (London: Pewtress & Co., 1883), 30-1.

¹¹⁸⁷ On Fawcett's life and thought, see the essays in *The Blind Victorian: Henry Fawcett and British Liberalism*, ed. Lawrence

Aristotelian mean between the stripped-down clearness with which the scheme is laid out in contemporary political science¹¹⁸⁸ and the manner in which a Victorian would have encountered it. Fawcett broke Hare's scheme down into seventeen propositions, the ones of greatest concern to us being the following:

[4] Each elector votes by a voting-paper. He arranges any number of *the names of the candidates* who have presented themselves *for any constituencies, in the order he is desirous they should be returned*....

[8] The Registrar-General divides the number of voting-papers so returned to him by the whole number of members composing the House, and the quotient so obtained, called the "quota," represents the number of electors entitled to have one representative.¹¹⁸⁹

[9] The Registrar-General forms a list of all candidates whose names stand first on a number of voting-papers equal to or exceeding the "quota"...

[10] The candidates on such list are returned to Parliament.

[11] No candidate shall require for his return more than the "quota" of votes...

[12] If a candidate's name appears first in more than the "quota" of voting-papers which must be appropriated to his return shall be selected from those papers which respectively contain the fewest names....

[14] If the House is not completed by members returned under the preceding clauses, the Registrar-General makes a list of the candidates whose names appear either first or second in the remaining voting papers a number of times equal to or exceeding the "quota," and the names appearing in the list are returned as members....

[16] If the number of members is still not made up, the Registrar-General proceeds in a similar way to make a similar list of those candidates whose names appear either first, second, third, &c. the requisite number of times in the remaining voting-papers, and the process is repeated until the House is completed.¹¹⁹⁰

This was the institutional essence of Hare's program. Today, Hare's name is usually associated either with STV or proportional representation generally, or, more technically, with his formula for making up the quota. But it is crucial that we recognize that his plan was comprised of *several* parts which could be individually revised and collectively reconfigured to produce something different from the

Goldman (Cambridge: Cambridge University Press, 2003).

¹¹⁸⁸ One of the best is Michael Dummett, *Principles of Electoral Reform* (Oxford: Oxford University Press, 1997), ch. 11.

¹¹⁸⁹ This formula for the quota (the "Hare quota," or v/s) was typically abandoned in favor of the "Droop quota" ($(v/s+1)$) once it was devised in the late 1860s. (Here, v = *total votes*, s = *number of seats to be filled*.) The preference for the Droop over the Hare quota remains in modern systems of STV.

¹¹⁹⁰ Henry Fawcett, "Mr. Hare's Reform Bill Simplified and Explained" (Westminster: T. Brettell, 1860), 6-8. My italics.

whole which he envisioned and to which he gave the title “personal representation.”¹¹⁹¹ In order to understand where Hareanism – and the other forms of PR which would develop in response to it – fit within the spectrum of representative institutions in the period, we need to disaggregate these elements and consider their significance one-by-one.

In light of the principal concerns of this dissertation, five institutional aspects of Harean personal representation warrant particular consideration: (a) its relationship to the extension of the suffrage; (b) the manner in which it constructed constituencies; (c) its opposition to territoriality in districting; (d) the object for which votes were to be cast are under it; (e) the mechanism for transferring votes to candidates lower on the elector’s preference ranking. The remainder of this chapter takes up each of these features in turn, guided throughout by the underlying question of how to situate Victorian PR with regard to the traditions of representation which we have already investigated.

2) The Institutional and Conceptual Core of PR: A Story of Continuity and Discontinuity

a) STV, the Suffrage, and the Value of the Vote

At different moments in his long campaign for Hare’s system, Mill could be found depicting it in (superficially at least) rather opposed ways. This was especially true with regard to the relationship between his favored scheme and the concept of democracy. Take for instance this pair of assessments of the link between them:

No real democracy, nothing but a false show of democracy, is possible without [Mr. Hare’s plan].

[Personal representation] is neither democratic nor aristocratic...¹¹⁹²

¹¹⁹¹ Hare, *Election of Representatives*, xxxvi.

¹¹⁹² Mill, *Considerations*, 452; Speech on Personal Representation, 30 May 1867, in *CW*, vol. 28, 177.

Mill was speaking on somewhat different registers (and in different contexts) in the two cases above. Nevertheless, the juxtaposition of these statements is nonetheless revealing of a larger truth about the reception of PR in the Victorian era: to wit, that while Britons were convinced that PR had something essential to do with democracy, the nature of this connection was not clear and was interpreted in multiple ways. This difficulty was enhanced by the fact that – apart from Mill, whose own record on the matter was certainly equivocal – the earliest adopters of PR, including its progenitor Hare, were far from accepting that theirs was a *democratic* project in any straightforward sense.

We will, of course, not be able to adjudicate in its entirety the question of the democratic character of Victorian PR right now; instead, the hope is to develop a set of judgments about this issue over the course of the whole examination. But we have to begin by noting that “personal representation” as inaugurated by Hare was nondemocratic in the most straightforward sense of all: it did not include universal suffrage. In this way it looked more antagonistic to democratic principles than a proposal such as Harris’s, which eschewed democracy understood as *uniform* universal suffrage through the use of a variety of mechanisms to apportion the franchise in a manner that respected sociological differentiation, but which nonetheless provided for the enfranchisement of all male citizens.

There are two dimensions to the absence of universal suffrage as a part of their program, and they need to be carefully distinguished. These dimensions correspond to the distinction between STV as a method for translating votes into electoral outcomes and “personal representation” as a complete theory of representative politics, and even Hare himself struggled to keep them apart. First, sometimes universal suffrage appeared not to be included in Hare’s reform because *no recommendation on the suffrage* was. What was on offer was a voting system, a decision-rule, and as such PR was agnostic about the level of enfranchisement: “the suffrage is a matter so distinct from

electoral organisation, that the legislature should deal with the two things in separate Acts. Blending them together tends to confuse and embarrass the discussion of both”; “the system of representation in this work” did not bear, except in an incidental technical way, on “the subject of the suffrage.”¹¹⁹³ As even one of the most famous “friends of Democracy” within the PR ranks, Henry Fawcett, put it: “it will be perceived that this scheme has no particular connection with any opinion respecting a democratic extension or an aristocratic limitation of the suffrage....The plan is adaptable to every extent of the franchise.”¹¹⁹⁴ In these moments “the scheme” was treated as coextensive with STV, and from this vantage point the question of its preferability to the method of “local majorities” was orthogonal to the “question of the suffrage.”¹¹⁹⁵ It was a module which could be inserted into any set of representative structures, the “present system” as much as any other, without prompting any additional modifications.¹¹⁹⁶

These judgments of the independence of STV from the regulation of the suffrage were basically accurate. And yet the matter was a complicated one. This was because, as mentioned before, Hare’s “personal representation,” and the proportional representation movement which developed out of it, did not consist solely of STV. As a theorist of representation and not simply an innovator in vote-aggregation procedures, Hare had views about the level of enfranchisement. His

¹¹⁹³ Hare, *Election of Representatives*, 281, 258. For reasons having to do with the complicated way in which he wanted to amend the classification of local districts – a provision which was not essential to the scheme and was ignored by his followers – Hare did believe that inconveniences would result from his plan if the discrepancy between county and borough franchises was maintained; *ibid.*, 258. The less technical side of his opposition to variety in the suffrage is dealt with below.

¹¹⁹⁴ Fawcett, “Hare’s Bill Simplified,” 8. He went on to stress that this agnosticism applied not only to the level of enfranchisement but also to the weighting of voting power: “It would be entirely foreign to Mr. Hare’s scheme to express any opinion upon the question, whether or not intelligence and wealth should obtain a plurality of votes. Were this principle adopted, the scheme would be as well adapted to it as to any other”; *ibid.*, 16. For Fawcett as belonging to the democratic ranks, see Shaw-Lefevre, “The Representation of Minorities,” 715; Leslie Stephen, *Life of Henry Fawcett*, third edition (New York: G.P. Putnam’s Sons, 1886), 170-1.

¹¹⁹⁵ Hare, *Election of Representatives*, 167; “Representation in Theory and Practice,” *Fraser’s Magazine*, vol. 61, no. 362 (Feb. 1860), 188-204, at 201.

¹¹⁹⁶ Fawcett, “Hare’s Bill Simplified,” 8.

sentiments on the matter were fuzzy, bearing out his verdict that the enfranchisement issue was “of far less [importance] than that of organization” of the voting mechanism.¹¹⁹⁷ But underneath this fuzziness about the nature of a “wisely-regulated franchise” consisted in there was a clear unfavorability to universal suffrage.¹¹⁹⁸ “The pecuniary standard adopted by the Reform Act” – by which he meant the £10 householder franchise in boroughs rather than the higher county valuation – “seems to afford no unreasonable criterion,” Hare wrote, and he was in this respect understood to be comfortable with the status quo.¹¹⁹⁹ Similarly, to take just one more example: Fawcett, whose democratic credentials were later considered unimpeachable, was not averse to property qualifications at the time that he took up PR.¹²⁰⁰

Beyond this conservative strain, two aspects of Hare on the suffrage must be emphasized, for they both marked decisive divergences from the variety-of-suffrages paradigm. First, his deepest commitment on the suffrage issue – certainly deeper than his preference for any given threshold of enfranchisement – was to its *uniformity*. In direct opposition to Bagehot and his fellow travelers, Hare saw the steps toward standardization in suffrage rules that 1832 had taken as a trend to be completed rather than a course to be reversed; he looked on the difference between borough and county franchises as a preposterous anachronism.¹²⁰¹ In addressing the suffrage, what mattered to Hare was to speak “on behalf, – not of any particular qualification, – but of an equality of

¹¹⁹⁷ Hare, “Representation in Theory and Practice,” 201.

¹¹⁹⁸ Hare, *Election of Representatives*, xxxviii.

¹¹⁹⁹ Ibid., 267; Carstairs, *Short History of Electoral Systems*, 194. In Denmark Andrae had also been content with the application of his plan in a system with restrictive censitary requirements; Hoag and Hallett, *Proportional Representation*, 172.

¹²⁰⁰ Fawcett, *Leading Clauses*, 4. His requirements were somewhat more generous than Hare’s.

¹²⁰¹ “It may be hoped, however, that when the subject is examined in all its bearings, every party will agree on the abolition of distinctions, which are unworthy of the age in which we live, and carry us back to the times of the Norman villeins or the Saxon thralls”; Hare, *Election of Representatives*, 258-9.

qualification.”¹²⁰² From the perspective of personal representation, variations in electoral requirements were not inheritances of the longstanding wisdom of British constitutionalism but were bare “anomalies” to be expurgated.¹²⁰³

Hare’s contempt for what remained of franchise variegation under the reformed parliament was overdetermined, and it related to several facets of the theory (such as the critique of virtual representation) which will continue to be investigated. At the moment it suffices to say that Hare’s thought here resembled Grey’s impression, touched on in chapter three, that the old style of variegation was irreconcilable with a more modern, rationalized politics.¹²⁰⁴ In addition, it partook as well of the anxiety, discussed in chapter 4(d), that the attempt to divvy people up into groups whose electoral rights would differ was corrosive of national solidarity.¹²⁰⁵ If “equality” in the franchise was to be pursued, what next needs to be asked is on what basis this uniform standard was to be fixed. And on this front as well the divergence from the variety-of-suffragists, though subtler here, was again noteworthy. For Hare and Fawcett, the basis was straightforwardly *capacitarian*. Deciding on a baseline which would admit only the capable was a tricky task,¹²⁰⁶ but it was nevertheless a political duty to apportion the franchise to “fitness,”¹²⁰⁷ and their assent to the “reasonableness” of standardizing the suffrage at the level of the reformed borough was grounded in the belief that this threshold aligned with the demarcation between fitness and unfitness.

Hare denied that requirements for the franchise along his lines would turn politics into the domain of a caste – he disavowed the desire for a “perpetual exclusion” of certain “classes and

¹²⁰² Ibid., 260. See also Fawcett, *Leading Clauses*, 4, 13.

¹²⁰³ Hare, *Election of Representatives*, 259.

¹²⁰⁴ Ibid., 266-7.

¹²⁰⁵ Ibid., 259.

¹²⁰⁶ It was “the business of our legislators to select...that which is the test or qualification best suited to our country, our age, and our social condition”; *ibid.*, 265.

¹²⁰⁷ Hare, *Election of Representatives*, 263-6; Fawcett, *Leading Clauses*, 1, 11-5.

conditions,” “employment[s] or situation[s]” – and he was open to the establishment of “educational tests” as avenues to enfranchisement in addition to meeting the property qualifications.¹²⁰⁸ But, as wide as he might wish to cast his notion of capacity,¹²⁰⁹ Hare’s mode of delimiting the suffrage was the opposite of the variety-of-suffragist mode – and this difference amounted, from the variety-of-suffragist point-of-view, to a decline in inclusivity. In their lingo, personal representation bordered on class-rule; to follow Hare’s prescriptions on the suffrage would be perilously close to accepting what Grey had described as a monopoly of the £10 householders. The reason that Hare and company claimed that it would avoid this fate will be dealt with at length in what follows: the combination of STV and very large constituencies would permit what diversity existed among the enfranchised stratum to make its way into the assembly. But a crucial point of difference remained. At least the more philosophical advocates of electoral variegation had, as we saw in chapter four, a justification for leaving portions of the population unfranchised that was *descriptive* in nature, namely, that they did not contribute to public opinion and that endowing them with voting power would therefore have a distortive effect on the representation. Hare’s criterion for enfranchisement, on the other hand, was not descriptive¹²¹⁰; it hinged not on sociological inquiry but on substantive notions of worthiness and ability. Fixing the bounds of the suffrage – *uniformly*, it bears repeating – was a mechanism not for mapping the contours of sociological reality but for selecting the fit among the citizenry.

The gap between the variety-of-suffragist use of suffrage regulations as descriptivist tools

¹²⁰⁸ Hare, *Election of Representatives*, 266-7.

¹²⁰⁹ “Ordinary industry and skill in his calling, and ordinary prudence and self-denial in his conduct” were to put the subject within the pale of the suffrage; *ibid.*, 266.

¹²¹⁰ At least, it was not obviously so, though the descriptive and capacitarian rationales were not necessarily mutually exclusive. If one interpreted capacity as incorruptibility and then sees this corruption as an obstacle to the reflection of a genuine public opinion, somewhat as Bagehot and Greg did, then capacitarian and descriptive goals could coincide. And yet, despite his ambition to end corruption (e.g. *Election of Representatives*, 84-8), Hare did not square the circle in this way or foreground the possible descriptive harms of corruption when setting the boundaries for the suffrage. Instead, he (and Fawcett in this period) was relying on a freestanding ideal of fitness.

and this capacity-grounded notion of the voting boundary is highlighted by Hare's affection for Guizot. (Figures in the former school, you will recall, were more likely to repudiate him). Despite the mid-Victorian period having been a low ebb for his reputation, the doctrinaire statesman is cited with astonishing frequency in *The Election of Representatives*, including in direct support of the thesis of capacity as the ground of electoral participation.¹²¹¹ Though proponents of Hare's invention would, as we will cover, make much of its ability to do justice to diversity, the Guizotianism of personal representation in its original formulations meant that the diversity which it would translate into the Commons was different in scope from that which a Bagehot or a Mackintosh conceived of their schemes as capturing. To the latter, what the assembly needed to contain were the salient divisions in society; to the former, the differences existent within the rungs of the capable. Hare was less engaged in the sort of cartographic enterprise of mapping the nation onto parliament than in the development of a technique for improving the quality of electoral participation for "les capables."¹²¹²

This *doctrinairisme* on "the great question of the suffrage" had a further dimension.¹²¹³ While in liberal democracies today the fact that PR secures *equality for each vote*¹²¹⁴ is equivalent to securing *equality for each voter*, these two were not identical at the founding of personal representation. Indeed, while the former was repeatedly trumpeted as a great breakthrough of the scheme,¹²¹⁵ the latter was no part of it – as was made spectacularly clear by Mill's coupling of STV with plural voting based on

¹²¹¹ "Le gouvernement représentatif...examine quelle est la capacité nécessaire pour cet acte; il appelle ensuite les individus qui sont présumés posséder cette capacité, tons ceux-la, et ceux-la seuls"; *ibid.*, 205. Guizot, *History of Representative Government*, 62. See also Hare's very Guizotian clarification that, though he pursued uniformity or "equality" in the franchise, he disowned the doctrine of "an equality of every man with every other, which the common sense of makind has in all ages repelled"; Hare, *Election of Representatives*, 260.

¹²¹² *Ibid.*, 205.

¹²¹³ *Ibid.*, 205.

¹²¹⁴ That is, each vote represents the same fraction of a member through the construction of unanimous constituencies. This is the subject of the next subsection.

¹²¹⁵ *Ibid.*, 67, 108.

education.¹²¹⁶ Hare's own version of personal representation was inconsistent with the then-current operation of a plurality of votes in parliamentary elections through the property-owner's or university affiliate's belonging to multiple constituencies, but this incompatibility was due not to normative but to *technical* factors.¹²¹⁷ On the many versions of STV which had a different instantiation of constituencies than Hare's, it would have been perfectly possible for "the same individual" to possess "more than one vote" in the sociological manner of the "present franchise" by casting a vote in several districts.¹²¹⁸ Indeed, this would almost certainly have been the default had PR ever been passed, and legislation would have been required to repeal this kind of plural voting as a separate measure. Moreover, all forms of PR are easily conjoined with the graduation of voting power, as would be done, for example, in turn-of-the-century Belgium.¹²¹⁹ The question of plural voting was one which divided the pro-PR community itself; anti-plural-voting PR supporters were far from taking for granted the abolition of plural voting but instead felt compelled to argue against it.¹²²⁰ It was noted earlier that Bagehot accused Mill's reform plans of being inadequately empowering of the working class. Regardless of whether Bagehot's appraisal was correct, it should at

¹²¹⁶ Mill, *Considerations*, 474-9. See Hare's approving remarks of such a possibility; *Election of Representatives*, 123. And see the remarks from Fawcett on the consistency of personal representation with the status quo at note 1196 above.

¹²¹⁷ Because he wanted the entire United Kingdom to form a single constituency, his own version of PR was by necessity incompatible with this more "descriptive" form of plural voting; Hare, *Election of Representatives*, 123. On this, see subsection (c).

¹²¹⁸ *Ibid.*, 123.

¹²¹⁹ Humphreys, *Proportional Representation*, 173. Similarly, in England many supporters of PR beyond Mill (such as Holyoake and Salisbury) would support some form of graduated voting.

Hare also seems to have supported graduated voting *in principle*, since he wanted graduation based on rates of taxation to be preserved in municipal governance. See *Election of Representatives*, 288-90; "Ideal of a Local Government for the Metropolis," *Macmillan's Magazine*, vol. 7, no. 42 (Apr. 1863): 441-7.

¹²²⁰ See e.g. Henry Vere Hobart, "Parliamentary Reform," *Macmillan's Magazine*, vol. 13, no. 75 (Jan. 1866): 259-72, at 271-2; Dodgson, *Principles of Parliamentary Representation*, 195. Dodgson's antagonism to plural voting is particularly notable both because it runs counter to what we might have expected given his Toryism but also because of his typically colorful prose: "This arrangement would no doubt be unwelcome to certain 'pluralists' who are now able to vote in several different Districts....But even if no remedy were found, the justice of allowing one Elector to vote as if he were, 'like Cerberus, three gentlemen at once,' seems so doubtful that the objection hardly deserves serious consideration." Dodgson, who had been intended for the priesthood, was punning here on the ecclesiastical meaning of pluralism, the infamous practice of bishops holding multiple benefices.

least now be apparent that Bagehot was driving at a real and surprising feature of Victorian personal representation: namely, that for its most famous defenders the suffrage and the vote-aggregation mechanism did not derive from a single, integrated normative framework. The latter had a diversity-inclusive, freedom-enhancing rationale; the former depended on judgments of “quality and of worth.”¹²²¹

The non-democratic character of personal representation’s approach to the suffrage, especially in the 1850s-60s, complicates what might otherwise have been a rather straightforward story about the return of *consent* as a value in electoral-representative theory. The broad Whiggish consensus about representation examined earlier did not see elections as devices for delivering consent; they were, rather, means for producing a desired composition of the assembly and a set of attendant benefits. Now, it might be imagined that STV fit right in with a more democratic direction of British politics over the latter half of the nineteenth century. The narrative would run as follows: advocates and theorists of democracy began to dissent from the consequentialist ethos that had for so long predominated. Against this, they held up the consent of every citizen to the government which rules him as a precondition for political legitimacy. This demanding vision of legitimacy required not only universal suffrage, but also the opportunity to cast a meaningful vote such that each citizen had a representative of his choosing in the assembly, in order to compensate for the impossibility of his participating directly in the making of the laws. PR, on this account, was of value by respecting, insofar as was feasible, the right of the individual to live under laws to whose formation he had contributed.

Something of this view would gain traction, particularly from the mid-1880s onward.¹²²² But

¹²²¹ Hare, *Election of Representatives*, 271.

¹²²² See e.g. Albert Grey, “Proportional versus Majority Representation,” 953; Williams, *Proportional Representation and British Politics*, 1, 29; Finer, *The Case Against PR*, 4.

to Hare and the bulk of his first generation of supporters this vision did not apply.¹²²³ As will occupy us in the next subsection, at Hare's stage the PR movement was devoted to ideas which look a great deal like consent as it operates in modern democratic theory – such as the goal of realizing representation by giving each voter an MP for whom they voted and of augmenting the freedom of choice. But PR in its inaugural phase, and for many of its supporters throughout the duration of our period, did not equate the goal of making each elector's vote effective in securing a member with any absolute, egalitarian notion of consent.

In sum, due to its approach to the suffrage the debut of Harean PR was not an episode in the march of democracy. Not only was it not proposed as a species of democracy or an avenue toward its fuller realization. Because it embraced *uniformity* but not *universality* in the franchise, it could also be regarded as not even the most inclusive *nondemocratic* representative arrangement on offer. Compare two texts from 1857, Hare's *Machinery of Representation* and Harris's *True Theory*: the latter recognized a “democratic” imperative of a sort – namely, the inherent right of every individual to have a say in the government – and therefore it extended the suffrage universally though differentially and unequally. The former officially admitted nothing that could really be denominated *democratic* within the Victorian framework on these issues.

Despite the rather “conservative” preferences of Hare and much of his initial following concerning the suffrage, Victorian PR's relationship was never one of absolute hostility to democracy. From its first appearance – and even more so during and after the making of the Second Reform Act – the attractiveness of Hare's scheme had much to do with *the prospect of democracy*. The point needs to be posed in this general way because PR had the odd property of having been desired *in light of the likelihood that democracy was on the horizon* more than because it was embraced by democrats

¹²²³ The French case differed in the way that one might have expected; the earliest figure in the Hexagon who can accurately be called a theorist of PR, the mathematician Joseph Diaz Gergonne, conceived of his plan in terms of consent and individual right; see Gergonne, “Arithmétique Politique. Sur les élections et le système représentatif,” *Annales de Mathématiques*, vol. 10 (1820), 281-8, at 282, 285.

themselves. While there was always a subset of self-described democrats who latched onto PR from a feeling of fidelity to their democratic affiliation, it was more common for those fearful or skeptical of democracy to turn to Hare as providing a way to make democracy more palatable if it had to arrive.¹²²⁴ Precisely because STV is a procedure for distributing votes to candidates *whoever is casting the former*, it was always available to be promoted in the event that universal suffrage was passed. As a result, even if PR accompanied by Hare's own desires on the limits of the franchise were less empowering of the working class than the variety-of-suffrages alternatives, Hare's scheme was less hostile to democracy than they were. This was for the simple reason that the variety of suffrages was in its essence an attack on uniform suffrage, whereas Hare's innovation was incorporable into any suffrage arrangement. From the beginning, therefore, STV was marketed to the reluctant democrat: "it is not only consistent with the most democratic suffrage, but, by greatly mitigating its dangers, would probably reconcile to it many who are now among its most strenuous opponents."¹²²⁵ In a Tocquevillian spirit, Hare admonished those whose "fear of democratic progress" led them to ignore solutions which could cohere with the "principles" of "every democrat."¹²²⁶ STV had the odd property that, while not by nature democratic any more than it was by nature oligarchic, it nevertheless had the power of making democracy less bad.

The reasons for this judgment about PR's ameliorating effect on democracy will be dealt with in due course. What must be addressed now is the accuracy of Hare's and Fawcett's impression that, while STV was of benefit to democracy, it was neutral with respect to how one evaluated universal suffrage. It is true, as we have seen, that endorsement of it was not dispositive of any

¹²²⁴ As usual, Dicey was perspicuous in identifying a shift in outlook: "[PR] was once considered a check upon democracy; it is not supported as the best method for giving effect to the true will of the democracy"; Dicey, *Law of the Constitution*, lxxiii.

¹²²⁵ Fawcett, "Hare's Bill Simplified," 29-30.

¹²²⁶ Hare, *Machinery of Representation*, 51-2. And see Mill, Speech on Personal Representation, 186: "Those who are anxious for safeguards against the evils they expect from democracy should not neglect the safeguard which is to be found in the principles of democracy itself."

attitude to the suffrage.¹²²⁷ But it might still be the case that democratic implications of a sort were embedded in the conceptual apparatus of STV. This is, I think, a correct depiction: from several angles there was an elective affinity or ideological kinship between STV as a vote-aggregation mechanism and uniform universal suffrage as a franchise regulation. A number of interlocking features of Hare's invention are especially significant from this point-of-view.

To begin with: as with the cumulative and limited vote, the concern to avoid the wasting of votes expressed an a-sociological approach to representation that aligned Victorian PR with Dicey's democratic perspective. Again, nothing intrinsic to a commitment to descriptivism *tout court* would dictate concern about the efficacy of votes in returning a member; to see "wasted votes" as a problem demanded that one (at least implicitly) adopt other criteria for judging representation. This was perfectly clear to Victorians from the fact that support for PR was not confined solely to those who perceived great descriptive inadequacies in the contemporary Commons. While we will see later that an emphasis on diversity and polyphony was characteristic of most PR advocacy, it was not necessary to it, as is highlighted by the fact that two of the greatest Victorian technicians of PR, Droop and Dodgson, both thought an assembly characterized solely by a bifurcation between Liberals and Conservatives could be in "correspondence" to "the state of opinion in the country."¹²²⁸ In seeking to render each vote "successful," PR campaigners appealed in the first instance to a notion of *what was owed to the elector* rather than to a picture of the desirable composition of the assembly (although of course this latter was supposed to come with the former being satisfied). Where Dicey expressed his opposition to sociologically-based thinking about representation in terms of fairness and avoidance of stacking the deck in favor of certain political

¹²²⁷ Even beyond the evidence provided here, this is intuitively clear when we consider that decisions about PR or plurality rule do not resolve the matter of where the age of enfranchisement should be set.

¹²²⁸ Henry Richmond Droop, "On the Political and Social Effects of Different Methods of Electing Representatives," (LSE Selected Pamphlets, 1869), 18; Francine F. Abeles, "Introduction to 'Proportional Representation,'" in *Political Pamphlets of Lewis Carroll*, 119. And see Duncan Black, "The Central Argument in Lewis Carroll's 'The Principles of Parliamentary Representation,'" *Papers on Non-Market Decision Making*, vol. 3, no. 1 (1967), 1-17, at 1.

options against others, for Hare and company the preferred terminology for articulating the rejection of these modes of thought was that of *realizing representation*.¹²²⁹ To be given a vote and yet not to contribute to the securing of a member of one's choosing was to be given a kind of sham-right; meaningful political participation, in the context of representative government, entailed effective exercise of the vote. "Political justice" in the domain of "the greatest moral object that society is called upon to undertake – the formation of a legislative assembly" was to be judged by whether the right of the individual citizen was actualized and not by judgments of the degrees of inclusion and power garnered by different groups in the Commons.¹²³⁰ There was no formal mechanism internal to STV for attaining "sociological" goals; STV was, instead, an advance in representation insofar as it more reliably delivered a good to *the person*, namely, that of "enabl[ing] every elector – with the exception of an ultimate fractional number – to participate in the choice of some representative."¹²³¹ Hare believed that the unit at the basis of the representative system was not groups but persons, and in this belief he seemed to be in company with the most radical wing of Victorian democratic theory.¹²³² Indeed, in this light Hareans appeared simply to be upping the democratic ante on plurality-rule democrats: if both of these camps judged the justice of the electoral system in terms of what it promised to each person, then the former went beyond the

¹²²⁹ He spoke of "making representation a reality" and converting "the *fiction* [of representation] into the reality"; described the claim that someone was represented by a member for whom he had not voted as "an untruth"; asked his readers "whether we are to proceed towards a system of representation, or towards something else – not representation, but a substitute for it"; see Hare, *Election of Representatives*, xxxiv-xxxv, 128; "Representation of Every Locality and Intelligence," *Fraser's Magazine*, vol. 61, no. 134 (Apr. 1860), 527-43, at 532. Similar phrases abound throughout his writings.

¹²³⁰ Hare, *Election of Representatives*, 61, 65.

¹²³¹ Hare, *Machinery of Representation*, 16.

¹²³² Russell gives a curious illustration of this alliance between Hare and radical democracy in back-projecting the label of "personal representation" coined by Hare onto the rather crude arguments for universal suffrage of eighteenth-century popular reformers and ultimately onto Locke; Russell, *English Government and Constitution*, 176-7.

We should note that, as we will see immediately below, this was not an obviously correct reading of the situation; certainly Hare did not accept that simply democratizing the franchise would yield "personal representation," and the younger Grey, for instance, was admirably clear that that "the principle of individual as opposed to community representation" was not resolvable into the conflict of universal versus restricted suffrage; see e.g. Grey, "Proportional versus Majority Representation," 936.

latter, guaranteeing everyone not only a vote but also an MP. It was more complete democracy; “true democracy,” as Mill called it.¹²³³

The important point here, though, is that this “personalistic” rather than “sociological” orientation not only could be claimed to deliver more democracy if universal suffrage were adopted, but actually inclined one to accept universal suffrage from its very logic. Four forces in particular pushed in this direction. First, PR supporters offered a set of criticisms targeted at *arbitrariness* that not only resembled, but actually took to an even more fundamental level those lodged by the likes of Dicey and Brodrick. For Hareans now moved to include as objectionably arbitrary *any territorial* divisions. While for Dicey and other first-past-the-post democrats an electoral system was suitably non-arbitrary if it distributed the vote equally and uniformly, for Hare all systems of representation except his own depended on the drawing of “arbitrary line[s]” and the making of “arbitrary selections.”¹²³⁴ They all relied on sorting electors in a way that could be judged inconsistent with the “fair share” of some group based on an opposed perspective.¹²³⁵ The trouble for an admirer of Guizot such as Hare was, however, was that if the “geographical division[s]” and “the parade of distinct interests and distinct objects in the country and the town” which grounded the current

¹²³³ Mill, *Considerations*, ch. 7; Speech in the Westminster Election of 1865 [4], 8 July 1865, in *CW*, vol. 28. See also John Dalberg-Acton, 1st Baron Acton, “Sir Erskin May’s Democracy in Europe,” in *The History of Freedom and Other Essays* (London: Macmillan, 1907), 97-8. The essay was originally published in the *Quarterly Review*, Jan. 1878.

¹²³⁴ Hare, *Machinery of Representation*, 26, see also 30; “Mr. Hare’s System: A Grouping of Parliamentary Electors that Combines a Just and Equal Distribution of Seats and the Free Expression both of Individual and Public Opinion with the Smallest Degree of Disturbance from Corrupt Influences,” in *Transactions of the National Association for the Promotion of Social Science, Manchester Meeting, 1866*, ed. George Hastings (London: Faithfull and Head, 1866), 202-8, at 207-8. See also *Election of Representatives* xii, 34-5, 41-2, 46-8, 63-5. See also Percy Greg, “Redistribution,” 816-7; Hobart, “Parliamentary Reform,” 267; Williams, *The Reform of Political Representation* (London: John Murray, 1918), 4 and *Proportional Representation and British Politics*, 15-6.

In the German-speaking context, Kelsen and Weber, both proponents of PR, would turn similar argument from arbitrariness and contestability against the vogue for “corporatist” modes of representation. See e.g. Kelsen, *The Essence and Value of Democracy*, trans. Brian Graf (Lanham, MD: Rowman & Littlefield, 2013), 63-5; Weber, “Suffrage and Democracy in Germany,” in *Political Writings*, eds. Peter Lassman and Ronald Speirs (Cambridge: Cambridge University Press, 1994), 80-129, at 88-94.

¹²³⁵ Hare, “Just and Equal Distribution,” 207.

arrangements were “arbitrary,” then the signs of “capacity” were no less so.¹²³⁶ There was no clearer criterion for intelligence or fitness than there was for sociological accuracy.¹²³⁷ To “select for admission to the franchise only the best of the unrepresented classes” was as arbitrary a mission as to secure “due balance of interests” in the assembly; no less controversial “criterion” was available to “ascertain...intellect” than to pursue traditional mirroring aspirations.¹²³⁸ As the great scholar and activist in international affairs Goldsworthy Lowes-Dickinson wrote in his summation of a century’s worth of change in theories and institutions of representation: “the watchwords” of “competency” and “varied interests” were equally resistant to any “measurements” that could deliver “finality” and perpetually liable to be given “new definition” by “any individual or any party” which disagreed; the “limit of competence” was as “shifting” and indeterminable a guideline as the “adequate representation of varied interests.”¹²³⁹ Given their hostility to basing the representative system on (as they saw it) *faux-objective* judgments about the districts to which electors ought to belong, it was not clear why this same hostility did not apply to the wish to restrict access to the vote to those alone who were judged “able” to exercise it well. Put differently: if it violated principles of fairness and non-arbitrariness to dictate to “people themselves who are affected” the boundaries of the constituencies in which their votes were to count, why did not it violate these same principles to set

¹²³⁶ Hare, *Election of Representatives*, 60, 65. For similar castigations of all kinds of fixed, “involuntary” constituencies as arbitrary/undemocratic in the modern literature, see e.g. Reeve and Ware, *Electoral Systems*, 46-7; Phillips, *Politics of Presence*, 106; Pogge, “Self-Constituting Constituencies,” 43; Rehfeld, *Concept of the Constituency*, 149; Robert Sugden, “Free Association and the Theory of Proportional Representation,” *American Political Science Review*, vol. 78, no. 1 (1984), 31-43, at 32.

¹²³⁷ See e.g. Ramsay MacDonald, *Socialism and Government*, vol. 1, 56-62; Kinnear, *Principles of Reform*, 2-3. Interestingly, Dupont-White attacked the *doctrinaires* on precisely these grounds; the translator for Hare’s greatest supporter was, thus, attacking one of Hare’s foremost inspirations. See Dupont-White, “Introduction” to *Le gouvernement représentatif*, xlii.

¹²³⁸ J. Holland Rose, *The Rise of Democracy*, second edition (London: Blackie & Son, 1904), 172-3; Salisbury (then Lord Cecil), “Theories of Parliamentary Reform,” 54.

¹²³⁹ Lowes-Dickinson, *The Development of Parliament during the Nineteenth Century* (London: Longmans, Green, and Co., 1895), 58-60.

a portion of the population outside the boundaries of the electorate altogether?¹²⁴⁰

The second democratic implication of STV stemmed from its promise to ensure each elector a representative, to leave no voter unrepresented through the waste of his vote on an unreturned candidate. Since the thought here – to wit, that there was something deficient about each voter not having been able to designate his representative – had no obvious descriptive basis, it might instead seem to draw on an underlying picture of democracy as a privileged mode of politics. Representation on this view was not a sociological or mirroring procedure but a proxy for a direct-democratic action that was no longer feasible; it was a concession to the fact that assemblies of the whole people were no longer possible. As Droop put it in 1869 (when England’s institutions were still quite far from instantiating one-man, one-vote) in laying out the perspective on representation which would be guiding his evaluation of “some of the different methods of election by which representative assemblies may be formed”:

In a modern state the recognised mode of ascertaining the opinions of the people is to convene a representative assembly. This representative assembly has superseded the general assembly of all the citizens which we read of in classical and medieval republics....Instead of the various questions of legislation and government being brought directly before the whole body of citizens to discuss and vote upon, a certain number of persons, fixed upon by some process of election, are deputed to represent the people, and the decisions of this representative assembly are accepted as equivalent to decisions of the whole body of electors.¹²⁴¹

It was in light of this view that the Commons was to be seen as the functional equivalent of an assembly of the nation *in toto* that Droop would endorse STV: STV, in providing the closest thing to giving “to every vote an equal value,” was thereby enabling the closest approximation to a full democratic assembly.¹²⁴² (Recall that the variety-of-suffrages school, by contrast, simply rejected any

¹²⁴⁰ Hare, *Election of Representatives*, 49.

¹²⁴¹ Droop, “Political and Social Effects,” 1. His other most important essay in electoral theory begins on a similar note; “On Methods of Electing Representatives,” *Journal of the Statistical Society of London*, vol. 44, no. 2 (June 1881), 141-202. And see Hare on the “republics of antiquity”; *Machinery of Representation*, 43.

¹²⁴² Albert Grey, “Proportional versus Majority Representation,” 936.

such equivalency as undesirable; the decisions of a deliberative, representative assembly were not expected to reproduce what “mere numbers” would have preferred.) If representation was a contrivance to allow for “self-government” in an age in which citizens no longer all gathered together in the square, then it was required that, if each citizen was not able to perform their functions in person, each could be shown to have authorized a member to act on their behalf.¹²⁴³ Only with complete representedness in this sense could “the government of the whole by the whole” be achieved.¹²⁴⁴ Thus the relationship between (a) the ambition to deliver a representative to each elector and (b) the commitment to democracy was a two-way street. It was not only, as is usually imagined, that some of those who were antecedently wedded to democratic principles came to value PR as a fuller realization of them. Influence ran equally in the opposite direction: Hare’s desire to *realize representation* for his electors preceded his acceptance of universal suffrage, but it seemed to call upon an implicitly direct-democratic imaginary about what was due to citizens.

A third democratic ramification of Hare’s “personalism” about representation was its elevation of the principle of majority rule. This can seem paradoxical given the lineage of PR in “minority representation” schemes, and indeed the nomenclature surrounding PR remained complicated; despite its best efforts, in pre-World War One England (in contrast to the Continent) PR never completely succeeded in shedding the “minority representation” label.¹²⁴⁵ The question of

¹²⁴³ Self-government became a popular rallying cry of the PR side, especially as the decades wore on; see e.g. Hare, “The Reform Bill of the Future,” *Fortnightly Review*, vol. 23, no. 133 (Jan. 1878), 75-84, at 84; Leonard Courtney, “The Representation of Minorities,” *The Nineteenth Century*, vol. 6, no. 29 (July 1879), 141-56, at 143.

¹²⁴⁴ Robert Lytton, “Report by Mr. Lytton, Her Majesty’s Secretary of Legation, on the Election of Representatives for the Rigsraad,” printed in *Personal Representation, Speech of John Stuart Mill, Esq., M.P., Delivered in the House of Commons May 29, 1867, with an Appendix*, second edition (London: Henderson, Rait, and Fenton, 1867), 17-42, at 19. See also Courtney, “Representation of Minorities,” 149.

¹²⁴⁵ Shaw-Lefevre, for one, mocked the turn toward “proportional representation” over “minority representation” as a pitiful attempt at rebranding; see “Representation of Minorities,” 721. The perception that PR was anti-majoritarian was quite durable, despite the best efforts of many of its proponents to dispel it, even among some of the more sophisticated commentators on the topic: see e.g. Kinnear, “Practical Considerations on the Representation of Minorities,” *Fortnightly Review*, vol. 4, no. 19 (Feb. 1866), 49-64, at 55; Fawcett, “Proportional representation, from the last speech of the Right Hon. Henry Fawcett, M.P., delivered to his constituents at Hackney, October 13, 1884,” (Earl Grey Pamphlets

whether this label was appropriate will be answered in the next subsection. But regardless of the answer on its status as minority *representation*, from Hare on it was a major boast that PR alone could guarantee majority *rule*; indeed, the distinction between representation and rule or decision was one of the fundamental conceptual pieces of the PR architectonic.¹²⁴⁶ An assembly that was returned by a concatenation of local pluralities could very well contradict the principle that “the majority of those who vote at each election shall rule” and result in “minority control of [the] assembly.”¹²⁴⁷ Only if the whole electorate possessed a member could one be certain that 51% of the membership of the assembly translated into 51% of voter support; on the other hand a majority of members who themselves had been elected by pluralities within their constituencies would often stand for only “a minority of the whole” instead of a “numerical majority” of the electorate at-large.¹²⁴⁸ Without PR, there was no security against the government of false majorities.¹²⁴⁹

Because this lesson about the “truth” of legislative majorities under PR is standard within the modern study of electoral systems, it is important to stress just how striking a departure this was from other visions of representation. The variety-of-suffragist was of course utterly unimpressed by any appeals to majorities outside the House; what was of significance to him was sociological rather

Collection, 1884), 1.

¹²⁴⁶ See e.g. Hare, *Election of Representatives*, xxx-xxxi; Albert Grey, “Proportional versus Majority Representation,” 936; Fawcett, *Leading Clauses*, 20; Carstairs, *Short History of Electoral Systems*, 138 (on Victor Considérant).

In this context, it is notable that Hare was loathe to speak of his scheme as a solution to majority tyranny; despite his having been influenced by Tocqueville, the phrase was absent from his major works and he was more likely to decry the “tyranny of minorities”; Hare, “A Note on Representative Government,” *Fortnightly Review*, vol. 18, no. 103 (July 1875), 102-7, at 102. See also his “Just and Equal Distribution of Seats,” 207.

¹²⁴⁷ Edmond Beales, W.R. Cremer, G.J. Holyoake, Walter Morrison, R.A. Cooper, George Odger, James Acland, Thomas Hare, and George Howell, “Representative Reform: Report of the Committee Appointed by the Conference of Members of the Reform League, and Others, on Mr. Hare's scheme of representation, held 28th February, & 7th & 21st March, 1868” (London: Trübner & Co., 1868), 4; Droop, “On Methods of Electing Representatives,” 144-5. See also John Lubbock, *Representation* (London: Swan Sonnenschein, 1890), 5-6, 64.

¹²⁴⁸ Mill, *Considerations*, 304.

¹²⁴⁹ As was discussed in section one with respect to the cumulative and limited vote, the majoritarian element in PR was also related to its asociological character; when “interests” or “communities” are not ingrained in the system, only the aggregation of individual votes (and thus the units of majority and minority) can be invoked to justify a decision.

than numerical fairness and accuracy. But even the conventional democrat was not especially concerned with the problem of majoritarianism as the PR champion understood it, that is, as a matter of assuring *correspondence* between degrees of support for a policy inside and outside the assembly.¹²⁵⁰ Instead, he was principally concerned with equality in access to a right (the franchise), rather than with the accuracy of parliament in registering the distribution of political preferences or conveying exact demographic quotients of consent to particular policies. What he desired was just that the members of the House be elected on a “one-man, one-vote” basis; that “intra-house” majorities be identical to “extra-house” ones was no substantive worry of his. Approval of electoral democracy was detachable from the deepening of commitment to majoritarianism that was intrinsic to PR’s interpretation of the goal that “the whole nation [be] fairly represented in Parliament.”¹²⁵¹ The latter – which we might call *parliamentary majoritarianism* as distinct from *parliamentary democracy tout court* to indicate that it rested the legitimacy of parliamentary decisions not on the equal extension of voting rights but on the assurance that a majority vote in the Commons conveyed majority consent “in the country”¹²⁵² – was the peculiar province of PR.

This expansion of what majority rule required implanted a democratic momentum to the theory of personal representation that the suffrage conservatism of some of its founding figures could not squelch. If nothing but “the predominance of majorities” understood in this demanding fashion could confer legitimacy on the decisions of the Commons,¹²⁵³ it was far from obvious on what legs the restriction of the franchise to the capable could stand. In Hare, as we have noted, no

¹²⁵⁰ Another method for ensuring that parliamentary decisions did not stray from the wishes of the national majority was the referendum, the movement for which gained steam with the second generation of PR support. The comparison between the campaigns for PR and the referendum is instructive in many ways, and will make up part of the chapter on the moral and practical controversy over PR once completed.

¹²⁵¹ Millicent Garrett Fawcett, “Proportional Representation,” *Macmillan’s Magazine*, vol. 22, no. 131 (Sept. 1870), 376-82, at 382.

¹²⁵² *Ibid.*, 382.

¹²⁵³ Courtney, “Political Machinery,” 89.

clear answer was supplied; it just was a bedrock principle for him that legislative decisions needed to carry the authorization of what one might call a *true majority of the capable*, the capable being coextensive with the electorate.¹²⁵⁴ But this was hardly satisfactory. If it were troubling that a majority in the Commons should not correspond to a majority out-of-doors, even though members of the Commons were presumed to be more informed and intelligent than the latter,¹²⁵⁵ it was not clear why the regress needed to stop here: why should not the majority of those with *capacité* be made to align in some way with the majority of the whole?¹²⁵⁶ Hare does not seem to have been especially bothered by the apparent capriciousness of his halting the momentum of his majoritarianism where he did. But there is no doubt that personal representation's message that "not only an arithmetical misstatement, but also a great political injustice, takes place" when "true" majorities were not secured led, in many minds, to the embrace of an ideal of "government of the whole by the whole."¹²⁵⁷ To value electoral majorities so dearly seemed, to many, inseparable from support for democratic suffrage.

The fourth and final way in which the aspirations inherent in the single transferable vote pointed beyond the immediate issue of vote-aggregation and toward a democratized suffrage was in the rejection of virtual representation. Section one of this chapter showed that the original plans of minority representation contained a critique of virtual representation. This critique, though, was

¹²⁵⁴ Characteristically, he quoted Guizot here: "representative government...seeks the majority from amongst those who are capable" [*cherche ensuite la majorité parmi les capables*]. For Guizot, unlike for Hare, limiting participation in representative government to *les capables* was not simply an isolated argument but stemmed from his cardinal theoretical commitment, the principle of the "sovereignty of reason." Despite the epistemic emphasis of much of Hare's thought, he cannot really be said to have been in command of any such theory. See above, ch. 4, note 729.

¹²⁵⁵ See e.g. Hare, *Election of Representatives*, fourth edition, 367. Hare was as ardent an objector to delegation as any of the figures discussed in this dissertation.

¹²⁵⁶ A similar thought underlay one of the traditional arguments against the ballot – namely, that where limited as opposed to democratic suffrage prevailed, the publicity of the vote helped to ensure some correspondence between the wishes of electors and non-electors by allowing the latter to "influence" the former; see e.g. Southgate, *Passing of the Whigs*, 92; Clarke, "Electoral Sociology of Modern Britain," 40. While Hare was a great opponent of the ballot, he did not accept this argument against it – nor, given his faith in *capacité*, ought he to have done.

¹²⁵⁷ Lytton, "Report on the Election of Representatives for the Rigsraad," 19.

more often practical in nature; it expressed an anxiety that certain identifiable groups in identifiable sorts of constituencies were underserved by the status quo and that this threatened the functioning of an otherwise healthy system. Thus one departed from the rule in order to preserve it; minority representation as instantiated in the limited or cumulative vote was remedial of a defect in a system of which virtual representation was a major element more than it was an attempt at replacement. With Hare and company, however, the critique was deeper, and it was intended to be more absolute. To the proponents of PR, virtual representation was inadmissible as an aspect of representative government.

Frequently the way in which the PR community articulated its opposition to virtual representation was to speak of it as a “lie”; it was akin to telling someone that he was virtually rich because another person to whom some sort of relationship with him could be drawn was wealthy.¹²⁵⁸ “Virtual representation” was “false in fact”; to speak of “virtual” as against “actual” representation was simply to confess that “we have not had representation” at all.¹²⁵⁹ To illustrate why it ought to have been conceived as a falsehood instead of as simply a less direct manner of being represented, Hareans often invoked arguments that were essentially descriptive – that is, they made claims about the fallaciousness of virtualism that turned on what we might say were mistakes in the sociology of opinion. The literature on PR abounds with such observations as the following to demonstrate the untruth of the contention that the adherents of an interest or party that lost in one district were represented just as well by victories won by this interest or party in other districts:

To tell the Liberals of Kent and Surrey that they are represented by the Liberal members for Scotland and Wales [is misleading]....Perhaps the one question about which Kentish farmers care most is the subject of extraordinary tithes....But the farmers of Kent cannot expect the Liberal members from Scotland to help them as regards extraordinary tithes. It is possible

¹²⁵⁸ Demonstrating the continuing impact of Bentham on Victorian political culture, the label used to express the denigration of virtual representation was frequently “fiction.” (This was Hare’s term of choice, for one; see e.g. “Representation in Theory and Practice,” 199-200; *Election of Representatives*, xxxv, 8, 90.) See Bentham, *Bentham’s Theory of Fictions*, ed. C.K. Ogden (New York: Harcourt, 1932).

¹²⁵⁹ Percy Greg, “Redistribution,” 810; Hare, *Election of Representatives*, 128.

that they do not even know what extraordinary tithes are.¹²⁶⁰

The idea of the minority in one place being represented by the majority in another is certainly ingenious, but it overlooks the fact of there being any differences between members of the same political party. There are Liberals and Liberals, and it was probably no source of consolation to Mr. Mill's supporters in Westminster that in Marylebone Mr. Harvey Lewis had been returned....It may perhaps be replied that the English Catholics [who returned no members] had no reason to be dissatisfied [since many Irish Catholics were turned]...but it is extremely unlikely that Catholics in Ireland exactly coincide, even in questions bearing on their faith, with the opinions of Irish Catholics.¹²⁶¹

A run of bad luck in one part of the country is not adequately balanced by a run of good luck for the same party in another part. If Scotch Unionists are under-represented, they are not fully compensated by English Unionists being over-represented.¹²⁶²

Rather mundane testimonials like these abounded in order to drive home the distortions which the “false assumption” that a losing group could be “adequately compensated” by other electoral results introduced into the system and thus to prove the inconsistency of virtual representation with parliament's standing as “a mirror of the nation.”¹²⁶³

On this logic, then, what undermined “the old and exploded” contention about being “virtually represented” was that it would inevitably involve drawing false equivalences between different sets of beliefs.¹²⁶⁴ This was not a merely remedial or practical objection, such as that covered above; it was, rather, a *principled* objection insofar as it alleged that virtualism could not help but run together unlike sets of ideas and preferences.¹²⁶⁵ But although it was a principled critique rather than one targeting a difficulty of implementation, it was still firmly lodged within the domain of the sociology of opinion – and this characteristic led it into theoretical difficulties regarding the degree of correspondence between the beliefs of constituents and MPs reminiscent of those

¹²⁶⁰ Lubbock, *Representation*, 18-9.

¹²⁶¹ MG Fawcett, “Proportional Representation,” 377, 379.

¹²⁶² Meredith, *Proportional Representation in Ireland*, 11.

¹²⁶³ Meredith, *Proportional Representation in Ireland*, 11; Lubbock, *Representation*, 64.

¹²⁶⁴ Lubbock, *Representation*, 18.

¹²⁶⁵ It resembles in shape the modern worry that introducing descriptive criteria into representation is necessarily essentializing.

addressed earlier under the heading of *Greg's problem*.

The trouble was this: implicit in the “descriptive” line of this hard critique of virtualism was the identification of the status of being represented with a complete agreement of opinion with oneself and one’s representative.¹²⁶⁶ Short of this unanimity, Sorites-style problems about where to draw the line between sufficient and insufficient agreement would arise that would open the door for virtual representations claims about the representativeness of current arrangements to reenter: who could say that the overlap between Liberals from Kent and Scotland, or between Catholics from England and Ireland, was not enough to make the “compensation” of one by the other defensible?¹²⁶⁷ And yet, first, PR theorists were in no way ready to guarantee this unanimity, as is clear from their rejection of delegation.¹²⁶⁸ This rejection was premised on the grounds both of the superiority in intellect and expertise of the MP and the incompatibility of deliberation with dictation from the constituency, but via both paths it contradicted the full identity of views that was necessary for a completely *descriptive* rebuttal of virtual representation. Second, because it was a sociological claim, it had to fit the facts, which were disputable. On the one hand, if there were not a great deal of ideological diversity, but the country was rather (as some thought, especially during those periods when a Liberal-Conservative duopoly looked sturdiest) naturally divided into two blocks of partisan allegiance, then PR seemed much less urgent and perhaps hardly an improvement at all upon the present system.¹²⁶⁹ But there could not be too much diversity, lest even the members returned by

¹²⁶⁶ This point about the degree of agreement with one’s representative is related in interesting ways to the anti-partyism of British PR, as can be glimpsed at Williams, *Proportional Representation and British Politics*, 18.

¹²⁶⁷ Hare, *Election of Representatives*, 10. For related thoughts in the modern literature, see Reeve and Ware, *Electoral Systems*, 80; Phillips, *Politics of Presence*, 157.

¹²⁶⁸ The PR movement, which was fractured along several dimensions, was at one in rejecting delegation: see e.g. Mill, “Tocqueville on Democracy in America [1],” 74 and *Considerations*, 510-2; Moisei Ostrogorski, *Democracy and the Organization of Political Parties* trans. Frederick Clarke, two vols. (London: Macmillan, 1902), 606-7; Wordsworth Donisthorpe, *Individualism: A System of Politics* (London: Macmillan, 1889), 52. And see note 1255 above.

¹²⁶⁹ Gladstone, “Declining Efficiency,” 560, 567; Parsons, “*Ignis Fatuus* vs. *Pons Asinorum*,” 376-9; Finer, *The Case Against PR*, 13; Shaw-Lefevre, “Representation of Minorities,” *passim*; Dicey, *Law of the Constitution* lxxviii-lxx. And see Hobart,

PR's voluntary constituencies seem no more than the products of ill-fitting coalitions that lacked the degree of unity for which their member could be said to stand in some kind of descriptive relationship.¹²⁷⁰ An immutable match between this sociology of opinion and PR in any of the versions in which it was promulgated was a thin reed on which to hang their advocacy. There was, in short, no airtight case for replacing virtual representation with PR on descriptive grounds alone.¹²⁷¹

As a result, in the final accounting the critique of virtual representation had to hinge on the necessity of electoral authorization. It was possible to endorse STV solely for technical reasons, as a mechanism that better accomplished the mirroring goals that animated the variety of suffrages; those who did so were not especially exercised by the urgency of eliminating virtual representation, and their subscription to STV was therefore more circumstantial and pragmatic.¹²⁷² But from this vantage point it was not possible to make the adoption of STV itself *a matter of justice*; instead, one could only treat it as a *means* – and not an inarguably superior one – to the just ends of representation. But as we have observed, this position was not enough for Hare or for most of his successors: they did see their reforms as matters of justice because justice demanded that the myth of virtual representation

“Parliamentary Reform,” 265 for an excellent summary of how satisfaction with the plurality-rule status quo was tied to a perception of the naturalness of party dualism.

¹²⁷⁰ The trouble, in other words, was this: if “all great subjects” really were so “many sided” that, as on a standard caricature of *On Liberty*, there were as many shades of political opinion as there were citizens, the notion that even PR could be truly descriptive would collapse; see Hare, *Machinery of Representation*, 42. One version of this criticism was Frederic Harrison’s mockery of Hare. Harrison believed Hare had voiced “the *reductio ad absurdum* of representation” because of the difficulties involved in the latter’s assumption that “each Member of Parliament expresses...the dogmatic convictions of his particular constituency”; *Order and Progress*, 158. And see note 1167 above.

¹²⁷¹ This is perfectly clear from the fact, on which we have already touched, that it was possible to see PR as the next stage in descriptive representation, one better adapted to electoral democracy – a technical successor to traditional variety-of-suffragism rather than a revolution in representation, so to speak. On this continuity-based framing, virtual representation was far from any kind of categorical wrong; it was just outdated. See e.g. Albert Grey, “Proportional versus Majority Representation,” 935-7; Percy Greg, “Redistribution,” 808. See also on this point, very suggestively, the use which Sir John Lubbock, arguably the leading light of STV in the 1880s made not only of Grey but also of Bagehot as authorities in his work; Lubbock, *Representation*, i, 71.

¹²⁷² In addition to the authors in the previous footnote, see Salisbury’s verdict that there was no electoral system whose instantiation was itself a matter of justice and that all were simply to be judged by how well they contributed to the descriptive “end” of representation; Salisbury, “The Value of Redistribution: A Note on Electoral Statistics,” in *Political Pamphlets of Lewis Carroll*, 227-47, at 242, 230. The article was originally published in *National Review*, Oct. 1884. In light of this view, it is not surprising that Salisbury was never more than an occasional supporter of PR.

be expelled from the system, since this latter was just a cover for the fact that, not only those without the franchise, but even many “electors are not represented.”¹²⁷³ The non-negotiable, justice-demanding character of personal representation was a matter of ending this “disfranchisement” inherent in the plurality-rule system.¹²⁷⁴

Yet if it was an injustice to “disfranchise” by rendering a vote inefficacious through its having been cast for a failed candidate, it was hard to see why it was not a greater injustice to leave large swathes of the population altogether without the vote. Indeed, precisely because the advent of STV promised to erase all traces of virtual representation within the electorate, it made non-possession of the suffrage itself stand out as a more glaring deprivation. On the old descriptivist model, there was a continuum of groups who were marginalized from the perspective of electoral efficacy – American colonists, residents of cities like Manchester before 1832, minorities within a specific constituency – who were nevertheless adequately spoken for in the Commons due to the variegation that marked the system as a whole. But given that personal representation dismissed all of this as a fiction, the limitations on the franchise which Hare and company continued to endorse gave their system a forbidding air of exclusivity. The opponents of democracy covered in chapters 3-4, after all, defended their restrictions on the suffrage on the grounds that these *improved* the descriptiveness and inclusivity of the assembly. Hare’s proposal, however, was premised on denying that it was legitimate to pursue the goal of inclusivity by this means. Since inclusivity was a widely-shared value of British parliamentarism, there was strong ideological pressure on Victorian thinkers who were attracted to PR to make their system more compatible with the ideal of the inclusive constitution in the only way available to them: by extending the franchise to all.¹²⁷⁵ If personal

¹²⁷³ Hare, *Election of Representatives*, 8; Mill, Speech on Personal Representation, 178.

¹²⁷⁴ E.g. Mill, “Recent Writers on Reform,” 357, 359, 364; *Considerations*, 448, 453.

¹²⁷⁵ For this reason it is not coincidental that many of the great figures in British PR – Mill, Hare, the Fawcetts, among others – were also strong supporters of the women’s suffrage movement.

representation's attack on virtualism contained the judgment that "a government is not good which, as to numbers of its people...allows them no voice in the choice of their legislators,"¹²⁷⁶ then it is no surprise that only a minority of its adherents ultimately declined to cast their support as part of a larger project for electoral democracy.¹²⁷⁷

Personal representation's hostility to virtual representation was so stark that it supplied an almost irresistible democratic impulse to the movement in spite of the reservations of some of its major figures. But how was this transcendence of virtualism to come about? The means by which personal representation would accomplish this was through a revolution in how constituencies would be constructed. This is the subject of the next subsection.

b) The Voluntary Constituency

This subsection brings us to what is really the key institutional departure of personal representation: its reimagination of the nature of the constituency. As we have already begun to see, many issues are involved in the debate between PR and plurality-rule systems (and between the many variations of each), and STV as presented by Hare claimed to deliver improvements along several dimensions: to equalize the value of each vote; to eliminate the waste of votes; to make each elector the authorizer of a member of the assembly; to create a Commons that "registered [public opinion] with an accuracy resembling that of a thermometer."¹²⁷⁸ But the technical amendment that was to make all of these goods possible was the move to a new kind of constituency. In short, the most basic conceptual question underlying the STV mechanism was: *what is a constituency?*

The simplest way to characterize the revolution in the constituency which wrought by

¹²⁷⁶ Hare, *Election of Representatives*, xxi.

¹²⁷⁷ E.g. Lubbock, *Representation*, 2.

¹²⁷⁸ Hare, *Election of Representatives*, 239.

Harean PR was that it changed constituencies from the settings in which discrete, pre-arranged blocks of citizens voted to groupings of voters fabricated by the distribution of votes itself. In other words, in a sense the main difference between Hare's proposal and the status quo was *temporal*: from being settled before the election, constituencies were now to be constructed *after* the election *by the action of the elector qua elector*.¹²⁷⁹ But this is only one way of construing the change that personal

¹²⁷⁹ This is an opportune moment for a digression onto French soil. By far the most trenchant analyst of PR in nineteenth-century France is Pierre Rosanvallon. However, when we recognize that the nature of the constituency is truly what marks off PR from more long-established genres of descriptivism, we can see that he in fact misdates the origin of the French PR movement. For Rosanvallon, this begins with the moderate-liberal lawyer and assemblyman Pierre-François Flaugergues. Rosanvallon sees Flaugergues as the originator of PR because the latter not only had a commitment to mirroring and pluralism in the assembly, but also linked this commitment to the idea that while the assembly's membership should be diverse, this diversity ought to stem from electoral divisions that were homogenous within themselves; And yet, because (as Rosanvallon himself notes) Flaugergues's system was based on fixed, class-based constituencies anchored in an antecedent sociology that determined the "natural fissures" in society and the relation of these different groups to one another, Flaugergues is best likened to the class-specific segment of the variety-of-suffrages school. As has been a major theme throughout the whole second half of this dissertation, the attachment to mirroring was consistent with a variety of very different electoral arrangements and of different assumptions about the homogeneity of the groups being represented. Instead of as a founder of PR, then, it is more appropriate to see Flaugergues as a French variety-of-suffragist. (While this school was never popular in France, it was not nonexistent. As Will Selinger has shown, a few French Anglophiles of the early nineteenth century, such as Simonde de Sismondi and Auguste De Staël, rejected the revolutionary heritage of uniformity of suffrage.) Since Rosanvallon does not recognize the variety of suffrages as a separate tradition in the history of representation, however, it is difficult for him to approach Flaugergues's astonishing pamphlet as anything but an imperfect adumbration of PR.

Rosanvallon's analysis is still perspicuous, though, because Flaugergues did play a role in the inception of French PR, namely, as an inspiration for Gergonne. (On the latter, see above, note 1223.) This connection between the two Frenchmen is a strong piece of evidence for the continuity side of the story about the relationship of PR and older models of descriptive representation; Gergonne took himself to be pursuing the same end as Flaugergues and offering a mere, though, vital refinement of the means.

A few miscellaneous points about Flaugergues are worth mentioning in connection with the broader themes of this dissertation. First, he is further evidence of just how sophisticated the empirical phase of the design of variety-of-suffrages institutions could be; paralleling the "Reformer" of chapter three who took into account the relative levels of political energy of the different classes in deciding on the regulation of the franchise, Flaugergues incorporated theses from political psychology into his distribution of seats. He believed that France was divided into upper, middle, and lower classes, and that each constituted a third of the nation rightly understood. However, in order to achieve the due equality of influence between "la grande propriété," "la moyenne propriété," and "la petite propriété," it was necessary not to give each a third of the deputies but to assign them in the ratios of 2/9, 1/3, and 4/9, respectively. This "overrepresentation" of the "petits propriétaires" was required because of the social-psychological fact of deference, which he estimated would diminish the true electoral power of distinctly lower-class interests and views by something on the order of one-quarter of its natural weight.

Second, Flaugergues had an apparatus of argumentation for the epistemic virtues of parliamentary deliberation as sophisticated as that of his English counterparts, and he articulated a concept of public reason ("*la raison publique*") that resonates in some ways with the concept as used today. Notably, however, he put the gains to stability of a National Assembly that balanced and included all classes at the top of the list of its virtues. This prioritization of the "principe d'harmonie sociale" comprehended in his vision of class representation reflects the sense of political turmoil and uncertainty during the Bourbon Restoration.

Finally, he gave an extraordinary account of deliberation that applied (how consciously is difficult to say) long-established views from the philosophy of mind to the assembly. For Flaugergues, including diversity within the assembly was a matter of securing the assembly's *freedom*. He treated the assembly as a corporate agent with a corporate consciousness (possessing an "*ame générale*") that, depending on the condition of its "passions," could be either "free"

representation made. Another way of putting the point is in terms of identity and affiliation. On all the other models of representation, the pre-arrangement of constituencies imparted to the elector an affiliation additional to the object of his vote. Beyond voting for candidate so-and-so, the elector was also a member of such-and-such geographical (or professional or class) constituency. Under personal representation, the elector was identifiable with nothing beyond his chosen candidate; there was no intermediary level of association between the voter and the candidate. With the erasure of established constituencies, Harean STV left only the voters themselves as the material of the electoral system, and this step of taking the electors *solely as such* as the be-all-and-end-all of political representation was truly unprecedented.

The abolition of fixed constituencies was the technical feature that lay behind the widespread depiction, usually meant negatively, of PR as “individualistic.”¹²⁸⁰ The debate about the

or not. Securing diversity within the assembly became in his eyes a prerequisite not just for better decisions but for its making decisions at all, as opposed to simply being determined to act by passions in such a way that “the reason” could not be said to “have any hold.” Here is how he summed up the relationship between the assembly’s diversity, its deliberativeness, and its liberty: “Les assemblées composées d’hommes ayant des intérêts et des passions homogènes, ne sauraient donc être libres; elles sont enchaînées par la passion commune. Si de telles assemblées ne sont pas libres, elles ne valent rien comme assemblées *délibérantes*. Il faut, pour que la raison ait quelque prise, qu’il y ait diversité d’intérêts et de passions.” In other words, freedom consisted in the capacity to stand back from the passions and desires and to reflect on them so that one’s choices came only after examination of all the courses available. In a collective body, this suspension of immediate desires could only result from the presence of several interests such that a “passion commune” could develop only *after* the exchange of views about the best way to proceed, rather than be present from the beginning simply as a result of the likeness of the members. This view of the sources of an assembly’s liberty closely resembles Locke’s account of the liberty “of intellectual beings” as the “power to suspend the prosecution of any desire” and instead “to examine, view, and judge, of the good or evil that we are going to do”; it transposes a view about the nature of free agency in a person to an assembly. It also contrasts with most discussions about the freedom of the legislature, which tend to focus on external conditions; if forces outside the assembly (the crown, public opinion) impacted its conduct, then it was unfree. What Flaugergues was concerned with, on the other hand, were the *internal* conditions of the chamber’s liberty. While I think that his analysis coheres with the theories of the Commons that we have been looking at, it is fair to say that the Frenchman differed from his British opposites in addressing this subject explicitly in terms of the internal sources of corporate liberty.

See Rosanvallon, *Le peuple introuvable*, 139-42; Flaugergues, *De la représentation nationale et principes sur la matière des élections* (Paris: Barrois l’aîné, 1820), e.g. 10-2, 15-7, 26-7, 63, 66-7, 75-6, 85-8; Selinger, *Philosophers in Parliament: The Crises of Eighteenth-Century Constitutionalism and the Nineteenth-Century Liberal Parliamentary Tradition* (Dissertation, Harvard University, 2015), 169-71; Gergonne, “Arithmétique Politique,” 282-3; Locke, *An Essay Concerning Human Understanding* (New York: Penguin, 1997), ed. Roger Woolhouse, II.xxi.47-53.

¹²⁸⁰ The criticism of the individualism of PR ran the gamut from traditional “Whiggish” interpreters of the representative system to more radical ideologies such as positivism; see e.g. Harrison, *Order and Progress*, 158; Leslie Stephen, “Value of Political Machinery,” 845; T.H. Green, “Lectures on Moral and Political Philosophy [1867],” in *CW*, vol. 5, 154; Kent, *Brains and Numbers*, 151.

appropriateness of applying this term was fierce and, most importantly, multilayered, even if these layers were seldom distinguished with precision by the participants. For three separate issues could be subsumed under this label: (a) the technical issue of how voters were to be grouped; (b) the units to which in practice PR sought to give representation; and (c) the broader sociopolitical consequences of implementing the system. The last question, which might more properly be described as the question of whether PR was *individualizing* or *atomizing* in its effects, belongs to a discussion of the “moral” side of the controversy; the second question will be treated in subsection (d). As for (a), on this score it undoubtedly warranted the label. Hare’s method of personal representation was individualistic in a strict sense; its machinery, its method, made use of no “corporate” elements. This was just what it meant to jettison the pre-arranged constituency.

These two novelties – the elimination of corporate elements and the construction of constituencies *through* rather than *before* the casting of votes – were aspects of the central innovation, the “voluntary” constituency.¹²⁸¹ That Hare considered this voluntariness to be the staple of personal representation was clear from his definition of the “opposite” of his system as one founded on “involuntariness” in drawing constituencies through, e.g. “geographical, local, and corporate divisions of electors.”¹²⁸² The substitution of involuntary for voluntary constituencies made possible a further change, namely, that constituencies would be *unanimous* rather than divided. The unanimity of constituencies is often thought of as the distinguishing mark of PR relative to first-past-the-post, and for good reason; many of the great gains which have been claimed for it from its inception through the present day – such as the end of the waste of votes and the exact replication of electoral opinion – are really artifacts of unanimity. And even as Hare saw it, the creation of these “unanimous constituencies” was the capstone of his proposal; the “principle of unanimity” in the

¹²⁸¹ Hare, *Election of Representatives*, esp. ch. 2.

¹²⁸² *Ibid.*, xl, 40-1. Andrae saw it in the same light; Andrae, *Andrae and His Invention*, 14.

return of members was the telos of the complex apparatus which he had devised.¹²⁸³ But unanimity was the *result* of voluntariness; it was only because he had figured out a way to do without the assignment of voters to set districts that he could accomplish the goal of “unanimity of choice” of candidate.¹²⁸⁴ In the slogan “voluntary unanimity,” the adjective was prior and fundamental, and the noun came downstream of it.¹²⁸⁵

How did Hare and Victorian PR conceptualize their voluntarism about constituencies? Most generally, they conceived it as a *system of individual liberty*. Freedom is a dominant theme running through British literature on PR and, I would submit, is more basic to its normative architecture than mirroring; at the very least, its emphasis on this value was distinctive, and much of the moral and intellectual improvement which it promised was premised on the way that liberty affected electors.¹²⁸⁶ Hare was especially emphatic about its libertarian credentials; indeed probably none of his successors ever reached his pitch of his enthusiasm for freedom, which led him to tinker with the nomenclature for his reform. “The system here proposed,” he wrote, might best be denominated “the system of individual independence” since its chief impact was to accomplish “liberation” and “freedom of action in representative institutions”; the “basis” and “condition” of all his work was “individual independence.”¹²⁸⁷ His was the “free electoral system” built upon the “free action of

¹²⁸³ Hare, *Election of Representatives*, vii, 28.

¹²⁸⁴ *Ibid.*, 24.

¹²⁸⁵ *Ibid.*, 195.

¹²⁸⁶ Both of the other traditions we have examined were in accord with the operation of the reformed system in paying little mind to electoral freedom; see e.g. Michael J. Turner, “Political Leadership and Political Parties, 1800-46,” in *A Companion to Nineteenth-Century Britain*, ed. Chris Williams (Oxford: Blackwell, 2004), 125-39, at 136.

For this reason PR has tended to attract those thinkers who wish to prioritize freedom over equality as the primary value of democracy; see e.g. Ostrogorski, *Democracy and Political Parties*, vol. 2, 661, 702; Kelsen, *Essence and Value of Democracy*, 72, 97; Urbinati, *Mill on Democracy*, 78. Urbinati is wrong to proclaim Mill’s uniqueness in highlighting liberty as the great advantage of PR; although they do not dig into the historical context, Bogdanor and Lakeman are far more correct to see this electoral libertarianism as in keeping with “mid-Victorian liberalism”; *What Is Proportional Representation?*, 77; Lakeman, *How Democracies Vote*, 111.

¹²⁸⁷ Hare, *Election of Representatives*, vii, xxxvi, 140-2, 216-218, 169, 256. See also Hare, “John Stuart Mill,” *Westminster Review*, vol. 45, no. 1 (Jan. 1874): 122-59, at 150: “Its fundamental principle is, in fact, a corollary of that of Individuality.

electors” as channeled into “free constituencies.”¹²⁸⁸ These liberty-emphasizing names and slogans were more faithful than some of the others associated with “proportionality” or “personalism” because his “cardinal idea” had been to “give to every voter this freedom”: “at the root of all real reform [lies] the question of the measure of individual power and liberty of action which shall be afforded to the electors.”¹²⁸⁹ Later generations of Victorian proportionalists agreed: their goal was to inaugurate the era of the “free and independent elector,” to establish a “*régime* of liberty.”¹²⁹⁰ So resounding was this libertarian strain among PR advocates that its opponents, such as the great Fabian activist and political scientist Graham Wallas, would turn it against them, mocking them for inflating the importance of the elector’s freedom out of all proportion to its practical significance in a way that resembles what I described earlier as the critique of Mill’s “fetishism” of diversity.¹²⁹¹ The nature of this attack confirms that Victorian STV was reckoned with in great part as a theory of the political liberty of the individual within the framework of representative government; it would stand or fall, it was widely perceived, based on whether its conceptual and predictive claims about liberty were sound.

As would be expected from a theory of *electoral* liberty, the freedom associated with STV centered on the conditions of choice. To this there were two dimensions. Unfortunately, while they were distinguished in the literature of the time, the terms applied to them were not very stable and could be confusing. Here are a couple of Hare’s attempts to categorize the two lines along which his scheme would enrich improve the conditions of choice. He would: (1) (a) “relieve every elector

It puts forward in a practical shape the necessity of freedom for individual action.”

¹²⁸⁸ Ibid., 108, 114-5. Similarly, Andrae offered the system of “free election” as the best name for his scheme, since its chief characteristic was that of “making election a free act”; Andrae, *Andrae and His Invention*, 34.

¹²⁸⁹ Hare, “Individual Responsibility,” 352; “Reform Bill of the Future,” 76.

¹²⁹⁰ Albert Grey, “Proportional versus Majority Representation,” 954; Courtney, “Political Machinery,” 85.

¹²⁹¹ See Graham Wallas, *Human Nature in Politics*, ed. Sugwon Kang (New Brunswick, NJ: Transaction Books, 1981), 232-5. And see Wallas, “The American Analogy,” *Independent Review*, vol. 1, no. 3 (1901), 505-16: “Undoubtedly it makes the citizen more ‘free’....But is he more likely to be right?”

wholly from any extraneous control” and (b) “give him an unrestricted choice from among all his countrymen”; his plan could secure two desiderata, both (2) (a) “*freedom* of choice” and (b) “*extent* of choice.”¹²⁹² Hare judged in the end that the latter formulation was not adequate – and this was because he had a maximalist vision of liberty that considered that one was freer the wider one’s field of choice was; he denied that an unimpeded “Hobson’s choice” could be called free, at least in the electoral sphere.¹²⁹³ But juxtaposing the two phrasings does highlight the dual nature of the freedom-enhancing project intrinsic to the voluntary constituency as he understood it. The single transferable vote was meant both (a) to reduce the dependence of the efficacy of one’s vote on the electoral conduct of others and (b) to widen the range of candidates from whom electors could pick.

To take the first dimension first: the primary work of an institution of electoral liberty was to secure non-interference. STV’s “first” object was “that the conduct of others, whatever it be, may in no respect interfere with [the elector’s] free exercise of his own political functions, and that he may be enabled to select the candidate in whom he has the most confidence, without regard to the sinister or other influences by which any portion of the constituency may be actuated.”¹²⁹⁴ How did STV achieve this reduction of interference? It did this by lifting certain constraints which existed solely as a function of plurality-rule elections in fixed constituencies. These constraints stemmed from the fact that under the current system the success of a candidate was a matter not of his earning a certain proportion of the overall vote (the quota) but of his having *beaten* other candidates. Making the return of a candidate contingent on his beating other contenders caused two linked kinds of dependence.

First, in the eyes of Hare and his disciples, the dominance of parties and the power of their

¹²⁹² Hare, *Machinery of Representation*, 34; *Election of Representatives*, 140.

¹²⁹³ *Ibid.*, 140; Hare et al, “Representative Reform Report,” 17.

¹²⁹⁴ Hare, “Note,” 105.

“wire-pullers” over the nomination of candidates was tied to the plurality-rule territorial system. Once party-machines settled on a candidate for a district, they could pressure all other even slightly sympathetic citizens who wished to run to stay away from the race lest the even worse option put up by another party slip in on a divided vote.¹²⁹⁵ And if a less popular figure or one less subordinate to party dictates had the fortitude to present himself anyway, voters in agreement with him would have to weigh their desire to cast their vote for the person they sincerely endorsed against the likelihood that doing so would redound to the benefit of those politicians who were farthest from him ideologically. Thus the voter was not free in the sense that, if he were to desire that his vote be efficacious, he could not simply vote his sincere preferences but would have to take into account strategic considerations such as electability.¹²⁹⁶ A second point – which was to a degree implicit in the problem of having to vote based on electability – was that an aspiring MP’s fate was determined not just by the amount of support he inspired, but also the amount of dislike which he elicited. On the current arrangements an incumbent could have the same number of supporters as in a previous election, but yet could lose a reelection campaign because a small knot of residents, who perhaps had not even voted previously, had joined the ranks of an opponent solely to block him – and, it was typically thought, had done so only at the instigation of party wire-pullers.¹²⁹⁷ In such conditions voters were dependent in the sense that the return of their preferred candidate was put at the mercy of the sentiments and actions of others who did not endorse him.¹²⁹⁸

¹²⁹⁵ E.g. Hare, *Election of Representatives*, 85-6.

¹²⁹⁶ It was characteristic of PR supporters to deplore strategic voting as immoral in its own right, as well as a distortion of the representative aims of an electoral system; e.g. Dodgson, *A Method of Taking Votes on More Than Two Issues*, in *Political Pamphlets of Lewis Carroll*, 46-58, at 56-7.

¹²⁹⁷ E.g. Williams, *Proportional Representation and British Politics*, 62; Edward Hugessen Knatchbull-Hugessen, 1st Baron Brabourne, “Redistribution of Political Power,” *Macmillan’s Magazine*, vol. 27, no. 157 (Nov. 1872), 67-76, at 73. Knatchbull-Hugessen, an important Liberal politician of 1860s-70s, was sympathetic to Hare but ultimately preferred an idiosyncratic form of the cumulative vote.

¹²⁹⁸ Intriguingly, this genre of dependence was also given the label “swamping”; e.g. Max Kyllman, “Mr. Hare’s System of Personal Representation,” *LSE Selected Pamphlets* (reprinted from the *Examiner and Times*, 2 Oct. 1866), 1. As Kyllman

Calling this a system of “individual independence” or “personal liberty” was, strictly speaking, inaccurate; the promises of Hare and company notwithstanding, in a collective project like electing representatives, “a perfect freedom of action in choosing their representatives” could never in fact obtain at the level of individual voters and had to remain something more like a regulative ideal.¹²⁹⁹ The efficacy of any individual vote was not quite *independent*, even if the cruder kinds of dependence in local plurality-rule arrangements had been eliminated. For all its individualism, “the liberation of individual electors from a compulsory union with others” (that is, the *voluntary* constituency) did not achieve the complete emancipation of the individual.¹³⁰⁰ Instead, what it did was to guarantee the independence of all “particular groups of voters” equal to the quota in size.¹³⁰¹ Every “quota of voters” could now be secure in placing their candidate regardless of any “manoeuvres” elsewhere in the electorate, since quotas were insulated from the shifts in preferences and tactics of voters who supported other candidates.¹³⁰² No set of voters could pool their combined strength to keep out a candidate with a quota of support behind him.

In sum, the unit whose independence was guaranteed was the quota, not the individual. But since a representative body made up of a series of quota-earners did loosen constraints placed on voters under first-past-the-post systems by giving each voter a greater margin for efficacious action, the individualistic-libertarian tone in which personal representation was often presented did capture

made clear, the problem was also linked to the issue of corruption, since the little clutches of swing voters might have voted against a candidate because they were bribed to do so. This will be dealt with in the forthcoming chapter on PR’s moral benefits.

¹²⁹⁹ Hare, *Machinery of Representation*, 34.

¹³⁰⁰ Hare, *Election of Representatives*, 113.

¹³⁰¹ Ibid., xiii. This difference is made apparent by a comparison of *On Liberty* with the *Considerations*. Whereas in the former Mill asserted that an injustice was committed if a “contrary opinion” held by “only one person” were silenced, in the latter it was “the influence of every mode of thinking *which is shared by numbers*” which he declared “ought to be felt in the legislature”; *On Liberty*, 229; *Considerations*, 507. The public sphere can be open to everyone, but even the freest legislature can only be open to every *group*. The legislature, by nature, cannot be as individualistic as the public sphere more generally.

¹³⁰² Williams, *Proportional Representation and British Politics*, 73.

an important element of the change which it sought to effect. The most precise formula for the pledge to emancipate the voter from susceptibility to the control of other electoral forces was accordingly something like this: the independence of each quota in the sense that the return of its MP could not be defeated by how other voters acted,¹³⁰³ combined with the removal of impediments to the elector's power to "unite himself with [any] number of his fellow-countrymen" with whom he happened best to agree.¹³⁰⁴

This impatience with the "embarrassing restrictions" obstructing the free disposal of the vote according to the voter's genuine preferences from among available candidates was linked to the second side of the freedom promoted by Harean PR: the expansion of the range of choice.¹³⁰⁵ Even though the two aspects were analytically distinct, in practice his reform decreased the constraints on the elector only insofar as it was accompanied by an increase in the number of seats (including, at the limit as in Hare's own proposal, *all* the seats where the nation was treated as a single constituency) which his vote could contribute to filling and thus to a potentially tremendous slate of candidates from which to choose. Where, for instance, one's vote could only "participate in" one or very few positions being filled,¹³⁰⁶ the same dynamics which dictated party loyalty and rallying around the least bad option to avoid losing the seat for one's "side" would recur no matter how the votes were counted up. Therefore, the liberty of the elector could not be judged independently of the expanse of choice which was offered him, and any structure that "prevents the electors of the

¹³⁰³ "The representation of any section of political opinion" should depend solely on "the number of its supporters" and not on "the attitude taken toward it by other parties"; Humphreys, *Proportional Representation*, 86. Humphreys had in mind here the evils of the "second ballot" system even more than of straightforward plurality-rule elections; as two-round or "ballotage" arrangements gained ground on the Continent, British PR reformers came to denigrate them as a step backward even from single-member plurality-rule districts; see also Williams, *Proportional Representation and British Politics*, 27.

¹³⁰⁴ Hare, *Election of Representatives*, 21.

¹³⁰⁵ *Ibid.*, xxxvi. And see 140: "The system of individual independence offers him a freedom of choice, not only of the two or three, but probably of two or three thousand candidates."

¹³⁰⁶ Hare, *Machinery of Representation*, 16.

kingdom from choosing any man whom they may consider the most fit to represent them” had to be rejected as “antagonistic to and subversive of their rights.”¹³⁰⁷ Moreover, Hare believed that the field of candidates itself would expand as a result of the destruction of territorial districts, since candidates who were unlikely to triumph in any specific plurality-rule election might now present themselves in the hopes of reaching the quotient by collecting votes from what were then several separate constituencies.¹³⁰⁸ Because parties would no longer have to worry about splitting the vote of their adherents, pressure to limit the number of candidates wearing their colors would vanish, and consequently a wider array of options not only outside the main parties but also within them could come forward.¹³⁰⁹ In sum, the related “artificial restraints” of the vote being split up into numerous districts and the stranglehold of parties upon the selection of candidates were to give way to a “magnificent field of choice [which] would be open to the electors of the kingdom.”¹³¹⁰ Hence the voluntary constituency was conceived as a technical innovation behind an extension of liberty in the electoral realm that comprised (a) a measure of insularity from the attitudes and strategies of other electors (through the guarantee of a seat provided upon meeting the quota), (b) the unencumbered ability of the voter to enter into a union with other voters for any candidate, and (c) the broadening of the set of candidates.

The conception of liberty embedded in the voluntary constituency was not understood as an isolated construction for its peculiar sphere. Instead, it was seen as an extension to the electoral

¹³⁰⁷ Hare, *Election of Representatives*, 100.

¹³⁰⁸ Ibid., 132-3. And see “Representation of Every Locality and Intelligence,” 529: “Our system thus gives to a few persons [party “wire-pullers”]...the power of practically limiting the competition to one or two candidates of each party....The obstacles which thus confer a monopoly upon two or three candidates, to the exclusion, in effect, of all the rest of their countrymen, are coupled with the electoral arrangement which confines every candidate to the votes of one particular constituency.”

¹³⁰⁹ E.g. Walter Baily, *Proportional Representation in Large Constituencies* (London: William Ridgway, 1872), 19-20; Smith, *University Representation*, 35-7.

¹³¹⁰ Hare, *Election of Representatives*, 45, 133.

sphere of liberty as it existed in other areas of life.¹³¹¹ Two *façons de penser* about liberty from other domains were particularly potent for Victorian PR.

The first was economic: it was the political equivalent of free trade. While PR did have support from economic “centrists,” interventionists, and socialists of various kinds, it is significant that many of the leading publicists for PR were free traders and that they took these two issues to be part of a common moral-political package.¹³¹² Hare, in particular, was not only adamant in his support for free trade but eloquent about the connections which he saw between it and his design for representative reform.¹³¹³

An age which has achieved the freedom of commercial intercourse in spite of the pretensions of local protection and monopoly, may not unreasonably hope to find advocates for the free interchange and communication, as well of political action as of political thought, against the far less plausible and more insolent claims of dominant inhabitants of arbitrarily selected and privileged boroughs and districts to a monopoly of the great right of national representation.

The purpose of this work is to show how practically small in form is the change that would suffice to liberate the elector from the bonds that now tie him to the other voters of the borough in which he happens to dwell, whereby his action is absolutely fettered to theirs...¹³¹⁴

Similarly, Courtney drew on the language of the free trader’s credo of the “natural laws” of the

¹³¹¹ Hence it was requisite for “men who profess to be advocates of general freedom” to subscribe to PR; Hare, “Representation of Every Locality and Intelligence,” 535.

¹³¹² Bromund, “Uniting the Whole People,” *passim*.

The perceived elective affinity between the two topics inspired Marshall in his invention, and it did so in ways that were overtly continuous with the sorts of themes about opinions “finding their level” encountered in Bailey and others in part one: “As in the case of the introduction of Free Trade, many doubts were entertained by practical minds as to this or that difficulty in working it, but these were quickly dissipated by experience because the system we had adopted was founded on just natural laws – so in the case of the Cumulative Vote, the adoption of it will, I believe, be simply an advance to a natural and equitable mode of taking votes...we shall find that the natural laws which determine whether parties at any given time shall be large or small, extreme or moderate, will act at least as well, and there is every reason to think will act better and more freely under an equitable system of taking the votes, than under the present imperfect one”; Marshall, *Minorities and Majorities*, 23.

¹³¹³ His first excursion into political debate caught the eye of the influential politician and champion of economic liberalism William Huskisson; Parsons, *Thomas Hare and Political Representation*, 10-17.

¹³¹⁴ Hare, *Election of Representatives*, 21-2. See also “Just and Equal Distribution of Seats,” 204-5, and his animadversions against “monopoly” cited in note 1308.

market in casting PR as a “return to nature and freedom.”¹³¹⁵ The “so-called doctrine of free-trade,” Hare’s most famous apostle said, went hand-in-hand with the truth that “all restraint, *qua* restraint, is an evil.”¹³¹⁶ In parallel, PR was meant to eliminate the evil of restraint from the world of elections.¹³¹⁷

Less polemically important, though still theoretically interesting, was another “economic” aspect to his theory of representation – one that was also tied to his Anglicized *doctrinairisme*. Guizot had characterized political representation as an extension of the economic division of labor. In choosing his representative the citizen “only did what is done virtually every day” in confiding a portion of his interests that he was unable to carry out himself to another person “capable of efficiently conducting them.”¹³¹⁸ Hare agreed that voting was not generically different from selecting a plumber or a banker. In “an advanced state of civilization” representation “is a matter of daily occurrence, and common necessity. It is the vicarious performance of duties which cannot be personally executed. It intervenes in commerce, in jurisprudence, in education, and in a thousand other forms.”¹³¹⁹ What is so interesting about Hare, however, is the argumentative end to which he put the identification of political representation and the division of labor. In the case of revolutionary and doctrinaire French liberalism, as well as in the work of other English thinkers who

¹³¹⁵ Courtney, “Representation of Minorities,” 152.

¹³¹⁶ Mill, *On Liberty*, 293.

¹³¹⁷ Hare’s and his disciples’ claiming of the mantle of having translated free trade into the world of elections would not go uncontested. As was briefly alluded to in ch.2, section 2(b)(ii), PR could equally be seen as “protectionist” insofar as it guaranteed ideas a seat in the assembly without their having to “compete” directly against other views to win a seat. This was a very important accusation, for it made up part of set of theses about how PR would lead to stagnation – precisely the fate which theorists of progress like Mill were trying to avoid. It will be a major element of the chapter on the moral effects of PR.

¹³¹⁸ Guizot, *History of Representative Government*, 287. The thought went back originally to Sieyès. On the Abbé and his “economic” vision of representation, see Pasquale Pasquino, “Emmanuel Sieyès, Benjamin Constant et le ‘Gouvernement des Modernes’,” *Revue Française de Science Politique*, vol. 37, no. 2 (1987), 214-28; Richard Tuck, *The Sleeping Sovereign* (Cambridge: Cambridge University Press, 2016), 172. Constant also operated in this frame; Fontana, “Introduction,” to Constant, *Political Writings*, 23.

¹³¹⁹ Hare, *Election of Representatives*, xxxv-xxxvi.

too it up,¹³²⁰ it was certainly not imagined that this view itself supplied an argument for one electoral system over others; rather, it was used to justify representation *tout court* against more direct-democratic visions. For Hare, however, the observation of the contiguity between “the choice of parliamentary representatives” and the “select[ion of] persons to fill other fiduciary or vicarious offices” was not meant to ward off direct democracy¹³²¹ – the prestige of the mid-Victorian parliament was too great to take such alternatives seriously. Rather, its purpose for him was to show the need for the “very much larger field from which to choose” which was the principal “novelty of [his] proposal.”¹³²² To Hare, the logic of the connection with the division of labor was identical to that of the analogy with free trade more generally: namely, to abolish restrictions on electoral choice. If “the exercise of individual judgment and deliberation suffice[d]” for the enormous array of “circumstances [in which] people are compelled to place themselves and their interests in the hands of others,” then it should not stop with the selection of MPs¹³²³; if the economic division of labor functioned because the individual was left to handle his own commercial affairs unencumbered by limitations on his judgments, the political division of labor would flourish for the same reason. Both of the economic inflections of his theory of representation had, then, the same end: to show that with PR the economic and political spheres would constitute a sort of seamless fabric of freedom.

A second important influence on the manner in which PR was understood as a “proposal for freedom” also had economic dimensions, although it was broader in its scope and would therefore be better described as *social*.¹³²⁴ This was the thought that voluntary associations were the lifeblood of a free society. No less than Tocqueville, many Britons were struck by the vibrancy of

¹³²⁰ See e.g. Brougham, *The British Constitution*, 62; Sidgwick, *Elements of Politics*, 373-4.

¹³²¹ Hare, *Election of Representatives*, xxxvi.

¹³²² Hare, “Just and Equal Distribution of Seats,” 204.

¹³²³ Hare, *Election of Representatives*, xxxvi.

¹³²⁴ Courtney, “Representation of Minorities,” 152.

associational life in the free Anglophone world (unlike France under its tyrannical *Loi Le Chapelier*), and Hare seized on the respect for the “voluntary association” as both consequence and guarantor of liberty to depict what voting was like under personal representation.¹³²⁵ His aim was for the electoral arena also to give “full scope” to the “voluntary and natural disposition to associate,” to “bring the disposition for voluntary association to the business of political life.”¹³²⁶ “The power of voluntary association,” the faculty of “free action” to enter into a “society or partnership,” were now to be extended to elections.¹³²⁷ Parliamentary representation should resemble civil society in the latitude of liberty it provided, and it was this resemblance, PR devotees believed, which the mechanism of the voluntary constituency provided. If it achieved this similarity, the colorful mosaic of associations and cooperative groups that characterized modern civil society would extend into politics. This is an important point: given the formal individualism and anti-sociological, anti-corporatist method of the scheme, there was nothing else to represent but what emerged during the electoral process itself via voters “associat[ing] themselves voluntarily.”¹³²⁸ Since “the vesting in every elector of a power to act...without any trammel created by the particular section of voters to which he is nominally annexed, is the keystone of parliamentary reform,” in a sense the only entities within the system were sets of “wills” unanimously agreed to join together for the purpose of being represented by the same candidate.¹³²⁹ The voluntary association of electors was all that was left standing after Hare’s purge of all “corporate” elements of the representative system.¹³³⁰

A final point should be made regarding the system of free election conceived as voluntarism

¹³²⁵ Sugden, “Free Association and the Theory of Proportional Representation,” 32.

¹³²⁶ Hare, *Election of Representatives*, 47; Hare et al, “Representative Reform Report,” 6.

¹³²⁷ Hare, *Election of Representatives*, 33, 23.

¹³²⁸ Hare, “The Coming Steps in Representation,” *Fortnightly Review*, vol. 37, no. 218 (Feb. 1885), 216-22, at 221.

¹³²⁹ Hare, *Election of Representatives*, 38.

¹³³⁰ Like the assumption of the mantle of free trade, PR’s understanding of voluntary associations was also challenged, particularly with respect to its anti-party animus. Again, this challenge is slated for discussion in the “moral” chapter.

in constituency construction. This point has been implicit in the foregoing, but it is important enough in marking the contrast with the variety-of-suffrages school to merit explicit treatment and it moreover serves as a bridge to the themes which will close this subsection. This is that a complete system of voluntary constituencies cut out all forms of mediation between the total aggregate of voters and the collection of MPs. There were no intermediary levels of sorting – all of these were denounced as fetters on the voter. It followed from this unmediated, unstructured character of the electorate that PR was irreconcilable with all kinds of quotas, understanding this term very broadly. The quota was, in a manner of speaking, the instrument *par excellence* of the traditional descriptivist, and it can be seen as a factor in any electoral system that retains even a territorial component.¹³³¹ For a Bagehot or Paley or Mackintosh, the electoral system was really just an elaborate set of quotas. What Hare and his most uncompromising successors envisioned was the antithesis of this apparatus: it was the most thoroughgoing anti-quota scheme possible. In this regard it distinguished itself even from other forms of PR, such as the party list, where quotas (such as for women candidates) can be reinserted at the level of party. While a party list system preserves the voluntariness of constituencies, they introduce an element of indirectness – since the vote is for the party rather than the candidate, the party can be made the site for inscribing sociological determinations back onto the assembly. STV, however, has no layer at which such criteria could be imposed; the composition of the assembly that comes out of it is an unmodified product of the electors' will. Victorian PR and the variety-of-suffrages were, consequently, at opposite ends of the spectrum when judged from this perspective: in the former, everything was constructed from the tally of votes; in the latter, all that the electors did was, in a manner of speaking, to choose the specific people who would fill the various slots pre-appointed to different segments of society.

¹³³¹ The US Constitution mandates that Ohio have two senators and sixteen congressmen in the same way that, say, an affirmative action program might mandate that a certain portion of the student body belong to specific demographic categories.

Two important questions arise out of this analysis of the voluntary constituency concerning the genre of representation to which Victorian STV should be said to belong. Both of these have been dealt with partially and in a passing fashion, but it is worth answering them more directly now.

First, we are now in a position to answer the question of whether it was a form of minority representation. The title “minority representation” remained with it for a long time, although proportional representation, while still contested as a label, had mostly won out by the last couple decades of the nineteenth century. While many STV proponents would ultimately reject the name as “misleading,”¹³³² others remained content with it. This satisfaction with the name was sensible enough. Like the original minority representation schemes, it was opposed to the principle of “majority representation” by which only “local majorities” could gain representation and “due weight to the minority” within districts was denied; all supporters of PR acknowledged that they wished to end a system that “deprive[d] the minority...of any share of representation.”¹³³³ The genius of PR was that it could give representation to *what were minorities* according to block-voting or single-member-district arrangements, and the older nomenclature captured this facet well.

Nevertheless, there were a number of reasons for the bulk of Hareans to repudiate the name,¹³³⁴ the most important of which being that it was not technically accurate. Unlike the schemes in section one, no minorities *as such* were represented, and thus Hare was perfectly justified in asserting that his “method has no affinity with any which has been suggested for the mere representation of minorities.”¹³³⁵ This justification stemmed from the fact that it was intrinsic to the

¹³³² Lubbock, *Representation*, 4.

¹³³³ Hare, *Election of Representatives*, 30, 3; Courtney, “The Seats Bill,” *Fortnightly Review*, vol. 37, no. 217 (Jan. 1885), 26-36, at 31.

¹³³⁴ Including, importantly, the strategic one that it led democrats and radicals to look on PR with mistrust as a contrivance of those who found the demos ignorant. The perception of an antimajoritarian impulse behind PR was widespread; see e.g. Stephen, *Life of Fawcett*, 170; Morley, “W.R. Greg,” 255; Kinnear, “Practical Considerations,” 55.

¹³³⁵ Hare, “Individual Responsibility,” 350. And see Humphreys, *Proportional Representation*, 62.

endeavor to “convert what are now only majorities into unanimous constituencies” that there be an end of the status of “minorities” as well.¹³³⁶ With Hare’s version of STV there were neither minorities nor majorities but instead a *collection of equal unanimities*. In the fact that it did not give seats to minorities *qua* minorities it was aligned more with the variety of suffrages than with a Marshall-style minority representation plan. For both the variety of suffrages and STV shared a curious characteristic, namely, that they strove to give a place to minorities in one sense¹³³⁷ – understood sociologically, or as the remainder produced by alternate electoral systems – while also keeping minorities *qua* electoral phenomena out of the Commons: the former by incorporating a variegated set of electoral majorities, and the latter by doing away with involuntary constituencies altogether.

Second, there is the matter of PR’s descriptiveness. The question of whether PR is democratic – or at least, whether it was meant democratically by its originators – has received a fair bit of scholarly attention,¹³³⁸ and we have already addressed it at length. Less well considered, are its descriptive credentials, perhaps because it is taken as self-evident that PR is a textbook example of descriptive representation.¹³³⁹ The dissertation’s reconstruction of the broader spectrum of nineteenth-century thought on representation, however, makes this interpretation look less straightforward.

That “Parliament should be the mirror of the nation” was announced as a central goal by all

¹³³⁶ Hare, *Election of Representatives*, vii.

¹³³⁷ See e.g. Bagehot’s statement that the two camps overlapped in this aim, as against the “doctrinaire radicals”; Bagehot, “Mr. Mill’s Address to the Electors of Westminster,” in *CW*, vol. 3, 544.

¹³³⁸ This is especially true with regard to the Mill literature, where it is contested whether Mill’s support of PR reveals his commitment to or fear of democracy. For the antidemocratic interpretation, see e.g. Alan Kahan, *Aristocratic Liberalism* (Oxford: Oxford University Press, 1992), 71-4; Paul Kern, “Universal Suffrage without Democracy: Thomas Hare and John Stuart Mill,” *Review of Politics*, vol. 34, no. 3 (1972), 306-22. For the democratic interpretation, Urbinati, *Mill on Democracy*, ch. 3.

¹³³⁹ E.g. Hanna Pitkin, *Concept of Representation*, 62-3.

PR theorists,¹³⁴⁰ and, as we will see in what is to come, this goal was often attended by a conviction about the extent of diversity in their society that equaled and frequently exceeded that of the variety-of-suffragist. But delivering an assembly of “genuinely representative character,”¹³⁴¹ as the great political theorist and sociologist L.T. Hobhouse put it in summation of a half-century’s worth of “liberal” arguments for PR, was a fundamentally different enterprise under STV than on the more longstanding currents of descriptivism.

For one thing, compared with the variety-of-suffrages approach mirroring was an *indirect* outcome of STV. On the former, the regulation of the electorate was directly guided by sociological premises; it achieved mirroring in that the scheme itself was based on a correct picture of the nation. On the latter, on the other hand, mirroring resulted indirectly from *freedom*; it was because free action was not impeded that personal representation would yield a “perfect representation” as reliable in its tracking of the nation as a “political thermometer, indicating sensitively the national pulse.”¹³⁴² With PR, inclusiveness and respect for diversity – “the representation of all minorities, and subsections of opinion”¹³⁴³ – was an upshot of each vote counting equally in the return of a member under conditions of genuine liberty and expansiveness of choice; these virtues had become completely detached from the possession of a correct understanding of society and its salient fissures.

Another way of stating the difference is that the substance of Hare’s innovation, at the deepest level, was that it was a *purely procedural mechanism of vote aggregation*; it dispensed altogether with the *sociological* phase of the mirror theory as practiced by someone like Bagehot or Harris. While PR may yield *outcomes* of greater diversity and inclusiveness, welcoming into the assembly “varieties of

¹³⁴⁰ MG Fawcett, “Proportional Representation,” 378. And see e.g. Hare, *Election of Representatives*, xxxiv, 12, 37, 134; Albert Grey, “Proportional versus Majority Representation,” 937, 940; Lubbock, *Representation*, 2, 27, 50.

¹³⁴¹ Hobhouse, *Liberalism*, 117.

¹³⁴² Hare, “Individual Responsibility,” 353.

¹³⁴³ Fawcett, “Mr. Mill’s Treatise on Representative Government,” *Macmillan’s Magazine*, vol. 4, no. 20 (June 1861), 97-102, at 101.

opinion and feeling,” “diversities of thought and sentiment,” which would otherwise have been left unspoken for,¹³⁴⁴ it denied the possibility of actually *mirroring some truth out there* – it folded all the action into the electoral procedure. Objective facts about social-ideological conditions against which the assembly could be compared had no place. The independent criterion which had existed for Britain’s original descriptivism was gone under proportional representation.¹³⁴⁵

Although this might be pressing the point too far, the differences between PR and the descriptive ideal as it had been traditionally known in England raise the question of whether PR ought to be considered a form of descriptive representation at all. At the least, the recovery of the fact that Britain had a robust tradition of genuine descriptive representation which was well entrenched at the time of the advent of PR can, I think, help explain a puzzle which some acute political theorists and scientists have noted: namely that, despite being the “cradle of pluralism,” Britain is one of the few European nations never to have adopted PR.¹³⁴⁶

The mainstream reformer, it will be recalled, was convinced that one could know the truth about the state of the nation. In light of this conviction, there was no reason to turn the composition of the assembly over to a supposedly “neutral” and non-arbitrary mechanism that left everything to the free judgment of all voters treated equally. Harris, among others, avowed this anti-proportionalist reasoning openly when he denied, against “some very enlightened and philosophical reformers,” that any form of minority or proportional representation was necessary because his use of a variety of mechanisms to apportion the franchise in a manner that respected sociological differentiation guaranteed that “the legitimate influence of the opinions and interests entertained by

¹³⁴⁴ Hare, *Election of Representatives*, 16.

¹³⁴⁵ In its absence of an independent standard and reduction of mirroring to an electoral procedure, PR’s claims about mirroring resemble certain inadequate epistemic arguments for freedom of speech in which the truth is simply identified with whatever view is left standing at the end of a discussion; e.g. Schauer, *Free Speech*, 20-2. And see above ch. 4, note 827.

¹³⁴⁶ Rosanvallon, *Democratic Legitimacy*, 28.

such minority will, where those are of real value and deserving of representation, have been already provided for in the State.”¹³⁴⁷ To Victorians like Harris already attached to the descriptive ideal and who saw it as a national heritage, it was far from self-evident that PR marked an advance in descriptiveness, or that it qualified as a descriptive system at all.

Given this, it should not be surprising that various possible implementations of PR were criticized for betraying the descriptive ideal. We saw earlier that Bagehot tossed aside Mill’s support for PR with a broader suffrage supplemented by plural voting as insufficiently representative to the working class. Similarly, anyone who felt that the £10 household franchise in boroughs was exclusive of the working class would not find Hare’s wish to go to STV while settling on this line as a uniform basis for enfranchisement to be a satisfactory solution to the crisis of representation. Finally, PR under equal universal suffrage, as it was often discussed even from the inception of the scheme, need have had no particular appeal, for this would give the working class electoral power in proportion to its numbers – but this was, precisely, a fate which the Victorian descriptivist was attempting to avoid, since he was certain that, though the working classes might make up, say, 75% of the population, they were not 75% of the nation properly understood in its diversity; this vastly exceeded, as Greg put it, the “due share” of the “lower orders.”¹³⁴⁸ Moreover, the common, “conservative” view that under uniform universal suffrage PR was the only route available to ensure some seats for the upper classes – that is, the embrace of PR in democracy in order to avoid an *even more undescriptive* outcome – should not be confused with the positive acceptance of democratic PR as furnishing a genuinely accurate mirror. To take up this latter stance of strong approbation one had to sign on to an individualist, aggregative understanding of society and public opinion that was

¹³⁴⁷ Harris, *True Theory*, 39.

¹³⁴⁸ Greg, “Expected Reform Bill,” 251; “Representative Reform [1],” 476. Or, as he phrased it elsewhere, “they [the labouring classes] comprise nine-tenths of the *numbers*, but only a fraction and segment of the *nation*”; Greg, “Representative Reform [1],” 466. See also Leslie Stephen, “The Value of Political Machinery,” 851-2. And see Bromund, “Uniting the Whole People,” 92, for Salisbury’s agreement on this point.

anathema to many thinkers across the ideological spectrum.¹³⁴⁹ And one had to give up on the thought that the composition of the assembly was ultimately answerable to any external, non-electoral standard.

In conclusion, PR had some claim to having squared the circle which perplexed the figures in chapters 3-5: it could preserve a measure of inclusivity and deliberativeness under a uniform, even democratic, suffrage while skirting the kinds of sociological judgments that led to charges of arbitrariness. But the cost of doing so was that it significantly narrowed the vision of what descriptive representation amounted to and what it could be said to achieve.

If the descriptive credentials of Hare's program could be cast in doubt, the other aspect of the voluntary constituency that has been stressed here – its non-arbitrary and freedom-enhancing character – had a firmer basis. But this relied not only on those facets of his project that we have already covered, but also on one that has remained in the background so far, even if has been implicitly present in the abolition of involuntary constituencies: namely, the abandonment of territoriality.

c) The Transcendence of Territoriality

If Hare's proposal was to enshrine complete freedom of choice and by this route to produce a legislature that was “a true epitome of the political opinions of society” and not merely of a few major “stereotyped expression[s] of political sentiment,”¹³⁵⁰ it would have to do away with all territorial divisions, which limited the number of candidates for whom one could vote to those who presented themselves for one's district and increased the remainder of voters who lacked their own chosen spokesman in the House. This is what his system did. While some of the outward forms of

¹³⁴⁹ From the “far left,” so to speak, see e.g. Harrison, *Order and Progress*, *passim*.

¹³⁵⁰ Hare, *Election of Representatives*, 309, 39.

territorial representation would remain – candidates would still stand for a local district but voters could vote for any candidate regardless of this nominal affiliation¹³⁵¹ – Hare’s desire, in the words of one disciple, was the complete replacement of “rigid territorial districts” with “personal districts.”¹³⁵² No tethering to territory remained; instead each MP would represent 1/658th of the *voters* without any compulsory geographical element entering the equation.¹³⁵³ As part and parcel of the abolition of involuntary groupings of voters, the chief source of this grouping, the territorial, had to go. What one was left with could be thought about in two ways: as either a district-less electoral system, or as one huge multi-member district – in the case of Britain at the time, a 658-member district.

Fittingly for a Victorian, Hare’s proposal of a single, Kingdom-wide constituency and the perfect liberty it supplied had a historicist dimension. “All is now different,” he proclaimed in 1860, from the days in which limitations on communication and transportation bound people to act in tightly circumscribed localities; one only needed to observe the state’s successful operation of “the Post-Office, that vast contrivance” to know that the “present facilities of communication” were capable of uniting Britain in one great constituency.¹³⁵⁴ The technological and demographic advances that made personal representation possible were, on Hare’s estimate, quite recent: the nineteenth century was the first one fit for electoral freedom. Therefore Hare’s judgment was not so much that the English government of the past was blameworthy for having had unfree institutions, but that it

¹³⁵¹ Ibid., e.g. xii-xiii.

¹³⁵² Albert Grey, “Proportional versus Majority Representation,” 954.

¹³⁵³ This was shared with Andrae: “the two systems have further in common the principle of giving voters full liberty to unite over the entire territory as in one electorate”; *Andrae and His Invention*, 35.

The Netherlands and Israel today both have nationwide districts in this way, though they are list systems. Denmark, Sweden, and Norway also have nationwide districts at one level of a two-tiered list system. See Lijphardt, *Patterns of Democracy*, 139-40.

¹³⁵⁴ Hare, “Representation in Practice and in Theory,” 199; *Election of Representatives*, 27; *Machinery of Representation*, 16. Compare with ch. 3, note 689.

was wrong to continue the historical system in light of the potential for freedom in modern times.¹³⁵⁵

(This historicizing lens applied to the aforementioned analogy to free trade as well. Hare, ardent free trader that he was, joined many of his contemporaries in seeing free trade less as an eternal verity than a principle suited for their advanced epoch. For example, he decried majority representation in one- and two-member districts as a “protection [that] has not any of the excuses which were sometimes urged for the prohibitions of trade.”¹³⁵⁶ Protections on and regulation of trade may have looked sensible in earlier eras, but that did not derogate from the fact that freedom of trade had now become an article of justice. Likewise, however well this electoral patchwork had operated in the past, Victorian Britain was a society fit for freedom in the sense of dropping a territorial basis to its representation that could now be no more than a set of “artificial bands.”¹³⁵⁷)

By and large, however, Hare was not followed in this plank of his platform. Widespread doubts about the practicability of his scheme often focused on the recommendation of the single constituency, and therefore this was, from the standpoint of its practical political chances, one of the

¹³⁵⁵ “Let us consider what is really the character of the change proposed. Nothing more than an application, in the business of electing our representatives, of the readier and more perfect means of action which the conditions of our times afford in almost all the operations of life. The object is to give to every individual elector the most complete freedom and power of exercising his best judgment in considering the qualities and merits of those whom he would choose to rule over him”; Hare, “Reform Bill of the Future,” 79. Hare was not alone in locating his innovation within a historical account of the system of representation; see e.g. Hobart, “Parliamentary Reform,” 46.

¹³⁵⁶ Hare, “Representation of Every Locality and Intelligence,” 529.

¹³⁵⁷ Hare, *Election of Representatives*, 148. His most remarkable passage on this parallel ran as follows: “In early times no doubt it was impossible for the inhabitants of towns distant from one another, and with few roads or facilities of communication, to exercise their franchise otherwise than separately; and even at this day each locality must have its own centre of action. So it was with regard to commercial intercourse; when there were scarcely any means of transporting commodities from one town or country to another, there would be no desire for freedom of trade. That which was first a necessity became gradually to be thought a law of nature or a principle of political wisdom; but with facilities of interchange and of transport grew up new desires. Legislators, however, thought themselves wise enough to prescribe the rules of conduct, which should be productive of national wealth, and to prevent the industry of one place from interfering with that of another: they established protections and prohibitions of every kind. We know the history of the struggle which, within the last few years, has succeeded in emancipating the trade of the kingdom from these trammels. It is the progress of development overcoming the doctrine of repression. It opens to our consideration the improvements which may be made in social science by an equally free interchange of thought and effort in the composition of the representative bodies by whom the political arrangements of society are to be governed....To say that it is not necessary now, because in earlier times communication was difficult or impossible, would be as reasonable as to say that as free trade was not needed in the infancy of society, when each community depended on its own productions, it is therefore unnecessary now”; Hare, “Just and Equal Distribution of Seats,” 204-5.

most harmful pieces of his thought.¹³⁵⁸ In response, PR supporters developed plans to carve Britain up into several large, multimember districts provoking too many serious *cris de coeur*,¹³⁵⁹ and in the late 1860s even Hare relented to pressure to offer a version of his scheme which would avoid this fount of objections.¹³⁶⁰

Importantly, though, this reinsertion of territoriality was not a mere return to the *status quo*. Instead, the role of territoriality in PR was altogether different than in previous systems: it was solely a practical necessity and not itself a positive instance of the descriptive principle.¹³⁶¹ This difference is made clearer by investigating the transformation of the British electoral system in the Third Reform Act, the debate around which was also one of the crests of support for STV.

With regard to expanding the suffrage, the Third Reform Act seems simply to follow in the wake of the Second. But in two respects it was more revolutionary. First, as we have noted, it standardized the suffrage between boroughs and counties and brought districts closer to the principle of equal population, thus delivering a severe blow to the variety-of-suffrages

¹³⁵⁸ Judging the situation a half-century on, a campaigner for PR lamented this chapter in its history: “There was doubtless some excuse for the cry of impracticability when, in launching in 1857 his proposals for proportional representation, Thomas Hare suggested that the whole kingdom should form a single constituency. This suggestion raised a barrier of prejudice against all proposals for proportional representation, which only to-day is being broken down...”; Humphreys, *Proportional Representation*, 110.

¹³⁵⁹ For instance, Droop settled on 8-10-member districts; Dodgson wanted 6-member districts; Courtney thought 5-members was a good norm (although he denied ever having given up on the feasibility of implementing “Hare’s system in its entirety”). Droop, “On Methods of Electing Representatives,” 184-7; Dodgson, *Principles of Parliamentary Representation*, 180; Courtney, “Seats Bill,” 35 and “Representation of Minorities,” 156.

¹³⁶⁰ Norris, “Politics of Electoral Reform,” 70.

¹³⁶¹ Importantly, even if the reintroduction of geographical districts derived from fears about impracticability, once reintroduced they did present some of the old problems of arbitrariness. This was because most plans did not recommend dividing the country into a number of equal districts, but rather sought to follow the “familiar divisions of the country,” assigning to each however many members accorded with the population of the designated area with a minimum of three-members per constituency. So, for example, a large city might constitute a dozen-member constituency, while sparsely populated rural area might be made a three-member district, with all manner of gradations in between. There was good reason for this way of proceeding; as the following subsection explains, slicing the country into equal districts meant splitting up local communities and causing a rent in the fabric of political life. The difficulty, though, was that the project of “enlarging our electoral areas” without violating the natural divisions in the nation was not immune to the charge of being executed in an “arbitrary manner,” even if proportionalists were confident that they could meet this objection. See Humphreys, *Proportional Representation*, 110; Fawcett, *Leading Clauses*, 26, 32.

perspective.¹³⁶² Second, and most pertinent to our immediate purposes, it converted almost all constituencies into single-member districts.¹³⁶³ PR reformers were leaders in the charge against this change,¹³⁶⁴ and STV reached what was arguably its nineteenth-century peak in fighting, unsuccessfully, against the tightening of territorial constraints and the demise of multi-membership.

The clash between STV and first-past-the-post single-member districts raised several intriguing conceptual points.

The first was constitutionality. Just as university seats provided a foothold within Britain's political heritage for the definition of constituencies on non-territorial grounds that could be then exploited by the more imaginative theorists of electoral variegation, the fact that multiple membership (even if this was predominantly dual) had historically been far more entrenched than single membership gave, to the eyes of some observers, the proportionalists' desire for districts of 10 or so MPs the patina of greater constitutionality than the move to near-exclusive single membership.¹³⁶⁵ It was not *prima facie* obvious that it was correct to regard even Hare's proposal of a single very numerous multi-member district, let alone the modestly-sized districts in other STV plans, as a greater conceptual departure from Britain's customary electoral-representative practices than the course that would be followed in the Third Reform Act.¹³⁶⁶

Second, and more significant theoretically, were the arguments that occurred under the rubric of "community" versus "personal" representation. Territory was less a freestanding principle

¹³⁶² On the extension and uniformization of the franchise in the Third Reform Act, see Michael Smith, "Parliamentary Reform and the Electorate," in *A Companion to Nineteenth-Century Britain*, 156-73.

¹³⁶³ For the exact figures, see Hawkins, *Victorian Political Culture*, 323.

¹³⁶⁴ Courtney, for one, resigned from Gladstone's cabinet over this component of the Act.

¹³⁶⁵ On "the great and decisive change" marked by the adoption of single membership, see e.g. Carstairs, *Short History of Electoral Systems*, 191; Philip Norton, *The Constitution in Flux* (Oxford: Martin Robertson, 1982), 228.

¹³⁶⁶ To this end it is noteworthy that Hare cited Burke frequently as part of a general strategy of establishing his scheme's consistency with constitutional practice; see e.g. *Election of Representatives*, 1, 6, 18, 48-9.

than the means to realizing the accurate representation of “communities.”¹³⁶⁷ In anti-proportionalist discourse there was an equivocal character to the notion of community – on the one hand, it sometimes simply referred to the locality which was supposed to be coextensive with the territorial district; on the other, it defined any group with a common interest or opinion, whether geographically linked or not, to which the territorial constituency could stand in a “virtual” relationship.¹³⁶⁸ For the present, what is of most relevance is the former, locality-based electoral communitarianism.¹³⁶⁹

From this standpoint, localities were organic communities whose cohesiveness and integrity would be broken by large multi-member districts or the single national constituency. This communitarian counter to PR comprehended a set of predictive claims about the negative consequences that would the replacement of electoral localism by an “abstraction of personal relations” among voters and between voters and their MPs,¹³⁷⁰ and these cannot be dealt with here. What matters at this moment is their view that the discarding of the locally-based constituency distorted the goal toward which representation was aimed, namely, obtaining MPs who really stood

¹³⁶⁷ In addition to the material in the variety-of-suffrages chapters, see also Moore, *Politics of Deference*, 232; Hawkins, *Victorian Political Culture*, 90-2, for somewhat different analyses that hit upon this point.

¹³⁶⁸ It is important to recognize that support for single-member districts, despite being acknowledged as a momentous turn in electoral policy even by its champions, did not have to involve conceding diversity to the STV crowd and emphasizing other virtues. Instead, it could be argued that “variety in representation will be sufficiently arrived at, and the minority of the whole fairly represented, without any artificial attempt to secure it.”

Indeed, one might contend that, if one is going to accept that some measure of diversity in the assembly is important, then FPP paradoxically places more faith in a certain kind of empirical claim about diversity than PR does: the former needs to assume a higher level of diversity at least on the territorial dimension. (“The [FPP] system assumes, not alone a great number of constituencies, but also a very great diversity and heterogeneity in the character of the constituencies.”) PR, however, can extract whatever diversity exists and bring it into the representative system, even if it is only trace amounts.

See e.g. Shaw-Lefevre, “The Representation of Minorities,” 732; “The Crusade for Proportional Representation,” *Fortnightly Review*, vol. 37, no. 218 (Feb. 1885), 202-15, at 213; Meredith, *Proportional Representation in Ireland*, 10. See also Roberts, “Resisting Arithmocracy,” 382-3, 400-3; Abeles, “Introduction to ‘Proportional Representation,’” 124.

¹³⁶⁹ It is worth being explicit that the high valuation of “locality” was not the province of conservatism; Idealist democrats tended to stress it too; e.g. Tyler, *Idealist Political Philosophy*, 70. The expansion of the suffrage was not necessarily linked to a positive assessment of individualism in representation, as has been noted so far with respect to Harrison and certain of the “deliberative democrats.”

¹³⁷⁰ Kinnear, “Practical Considerations,” 61.

for the “sense” (to use Gladstone’s phrase) of a locality.¹³⁷¹ On this view, which has remained common in defenses of first-past-the-post systems¹³⁷², when voters are no longer bundled in the proper (local) manner, the tie between the MP and the community of interest incarnated in the locality for which he served would wilt. His selection, instead of being part of a working descriptive order, was meaningless because it was nothing but the product of a haphazard group of unconnected voters diffused over a vast space. This was what was meant by the widespread Victorian attack on PR as anti-local.¹³⁷³

What is interesting about this line of objection is that it focused not just on the method of PR but also on its substantive effects on the composition of the Commons. Critics were arguing not just that it operated in on a non-local basis – PR supporters were, after all, more than happy to admit this – but that the result of this methodological alteration was that localities were not going to be represented as units any longer, that among the constellation of things for which MPs would stand local groups would cease to be among them. Was this attack accurate?

Both yes and no. PR’s transcendence of territoriality would have been of little consequence if it left the play of political forces under the status quo unaffected. In this vein, it was imagined that PR would weed out certain evils that attended local representation: a “parochial” spirit that encouraged candidates to appeal to “petty local jealousies and prejudices” rather than to issues

¹³⁷¹ It is important to recall in this context that among the more conventional, less imaginative descriptivist authors the representation of localities was linked to larger mirroring aims – that is, localities also doubled as bearers of “interests.” As a result, disturbing the pattern of “senses” of the localities meant throwing off the descriptive enterprise. This perception of introducing disturbance into the normal course of representation was expressed by alleging that “crotchets” would displace “really organic interests and opinions” in the Commons. This was a cogent line of objection, one complementary of the earlier characterization of PR as protectionism in that it also culminated in a forecast of stagnation.

¹³⁷² E.g. Haim, *Proportional Misrepresentation*, passim.

¹³⁷³ Hare cited “that it is too complicated to be practical” and “that it is hostile to our local system” as the two most common complaints about his proposal; *Election of Representatives*, vii.

affecting “general interests” and appropriate to the “wider relations of national life,”¹³⁷⁴ as well as the more mercenary forms of corruption that obtained only in local constituencies where relatively even competitors could try to swing the balance in their favor by bribing a few knots of voters.¹³⁷⁵ It thereby promised an emancipation from the worst aspects of binding local constituencies. Moreover, much like the class-specific and guild-style reformers from earlier in this dissertation, it was essential to PR reformers’ brand of pluralism that mirroring the nation involved finding space for views and interests that were not easily “localizable,” and this presupposition was obviously inconsistent with any sort of monopolistically localistic stance on representation.

And yet PR reformers denied that their system’s large districts and its transfer to “personal” from “territorial” construction of constituencies was equivalent to the eradication of local units from parliamentary life. Perhaps surprisingly, they bitterly contested the claim that their intention was “to delocalize.”¹³⁷⁶ The criticism, they argued, was based on a mistaken conflation of the elimination of the binding quality of territoriality with the foreclosure of local factors from entering into the assembly.¹³⁷⁷ Harean PR was formally neutral with respect to local ties, as it was to all ties between citizens – this is what made it “personal” representation. But this neutrality in no way prevented “contiguity of place” from “assert[ing] its influence.”¹³⁷⁸ In a way remindful of how champions for toleration would argue that if true religion really were so vital to personal well-being then it ought not to have to rely on the coercive force of the state to flourish, supporters of PR parried these criticisms by arguing that if local influences really were important then they should fare well under a

¹³⁷⁴ Hare, *Election of Representatives*, 73; Knatchbull-Hugessen, “Redistribution of Political Power,” 73-5. See also e.g. Fawcett, *Leading Clauses*, 10, 24; Rose, *Rise of Democracy*, 163.

¹³⁷⁵ The crusade against corruption will be covered in the chapter on the moral side of PR.

¹³⁷⁶ Hare, *Election of Representatives*, xii.

¹³⁷⁷ As far as locality was concerned, all that his innovations had done was to make “geographical limits” no longer “the sole basis of political action and association”; *ibid.*, 73 (my italics).

¹³⁷⁸ *Ibid.*, 73.

liberty-enhancing system that gave “free play” to all “forces” in society.¹³⁷⁹ Precisely because PR was an open system, it was open to local influences as well.¹³⁸⁰

Hare, and especially his disciples who were most active during the debates over the Third Reform Act, did not stop here, however. Again, paralleling those devout proponents of toleration who claimed that liberty of belief was the most fertile soil for the growth of genuine religious feeling, promoters of STV claimed that their scheme was actually *more hospitable* to genuine local attachments than the territorially-based alternatives, especially single-member districts. The system of voluntariness, as Hare put it, was best at empowering the “wholesome influences of locality,” which would be “destroy[ed]” on any other arrangement.¹³⁸¹ This superiority was connected to the problem of trying to provide a mapping of the social in a progressive society which was discussed above. Whether one had a “democratic” theory in which equal numerical districts were the rule or a non-aggregative descriptive picture in which constituencies were to be ordered according to common interests, if the electoral system had “a reliance on localities” it would “continually involve” redrawing boundaries to track social and demographic “changes.”¹³⁸² This constant tinkering¹³⁸³ –

¹³⁷⁹ Courtney, “Seats Bill,” 33.

¹³⁸⁰ “If people are so animated with a local feeling that they must vote for one man in their own neighbourhood, they would have perfect liberty to do so. You give them power to join with those who are allied with them in feeling and thought, instead of those who live next door; but you don’t force them to go afield, and wherever local wants demanded local representation they would be sure to secure it”; Courtney, “Representation of Minorities,” 153.

¹³⁸¹ Hare, *Election of Representatives*, xii. In the proportionalists’ discrimination of wholesome from unwholesome effects of localism and desire to make room only for the former they resemble the architects of the First Reform Act on D.C. Moore’s controversial interpretation, who were aiming to purge “illegitimate” influences of property while protecting “legitimate” influences; Moore, *Politics of Deference*, esp. ch. 4.

¹³⁸² Hare, *Machinery of Representation*, 25.

¹³⁸³ ““Any electoral division founded solely on a geographical or territorial basis...has constantly to be reconstructed”; Hare, *Election of Representatives*, 61. See also *ibid.*, 8-9, 218, as well as his finest articulation of this point from the first edition of the book in 1859, a full quarter-century before the switch to single-member districts which galvanized much of this discussion: “In the mobile and susceptible condition of population and society at this day, it is impossible not to observe the purely speculative character of all conclusions founded upon what the permanent interests of the inhabitants of a particular district may be, – upon what they will themselves consider them to be, or upon what their majority may resolve. In a revision of our electoral system, all those who would found the Parliamentary strength of interests or classes upon the basis of constituencies formed for their support, should consider with what degree of safety they can

which was associated pejoratively with American and French democracy¹³⁸⁴ – could not but result in splitting up communities in the midst of organic development. Conversely, the ceaseless rejiggering would lump together dissimilar communities such that certain groups wound up voiceless. Without such a “self-acting process” which would adapt of itself to “the changes necessarily incidental to the progress of time,” the integrity and individuality of distinct local communities would be ever under assault.¹³⁸⁵ Hare, typically citing Burke, contrasted “a system of arbitrary divisions, constructed entirely for electoral purposes” and for which “there will not be wanting reasons for its reconstruction to-morrow” with true respect for locality, which was anchored in a desire not to interfere with “these political incorporations which grow out of the constantly operating causes by which all human associations, like material things, are dissolved and reorganized, [and] are found to have the deepest roots.”¹³⁸⁶

According to proportionalists, this harmful slicing up of the surface of the nation into artificial segments reached its apogee in the Third Reform Act’s move to single-member districts, which “involves the arbitrary division of natural communities” and in consequence “weaken[s] local life.”¹³⁸⁷ “The first and most obvious evil” of that installment of reform “would be the utter extinction of that local representation which is so valuable an element of Parliamentary thought and of national life.”¹³⁸⁸ The “living creature” that is a “communal existence,” an “organic constitutional being with ideas, traditions, interests of its own, with a collective thought and will,” a “real local existence and community” imbricated in “local institutions, corporations, municipal existence and

rely upon a body of electors within any certain area remaining permanently faithful to the principles by which they may be at present guided”; *ibid.*, xxvii.

¹³⁸⁴ Seymour, *Electoral Reform in England and Wales*, 496; Percy Greg, “Redistribution,” 815.

¹³⁸⁵ Hobart, “Parliamentary Reform,” 264, 272.

¹³⁸⁶ Hare, *Election of Representatives*, 41-2. And see Fawcett, *Leading Clauses*, 26-7.

¹³⁸⁷ Lubbock, *Representation*, 8.

¹³⁸⁸ Percy Greg, “Redistribution,” 814.

government” – all were going to be “chopped” up into “inanimate machinery” by the “complete rupture” of 1884-5.¹³⁸⁹ The defenders of the new organization of districts were not insensible to these complaints, as we have seen, and when it came time to draw the new districts the bureaucrats in charge of doing so were instructed to respect the different “pursuits of the people” and to “take note of variety [of interests] and in a rough manner keep like with like.”¹³⁹⁰ But these instructions immediately raised problems of indeterminacy in deciding what counted as a “pursuit” and how to weigh certain kinds against others,¹³⁹¹ and moreover even if these questions could be settled satisfactorily in one instance this would do nothing to resolve the anticipated damage to local political life of subjecting districts to frequent reconstruction to keep up with societal progress. In trying to base the whole system of representation on a finely-drawn set of geographical limits, single-member districts in fact undercut the organic, naturally developing localisms for which a parliamentary presence was rightfully due.¹³⁹² Locality was to be represented by the free assent of some portions of voters to its importance – indeed, only under conditions where compulsion had been ended and the “widest scope and inducement for local combination,” as for combination for any ends, been afforded, could it be said that genuine local representation obtained at all.¹³⁹³

¹³⁸⁹ Ibid., 814-5. And see John Heywood, who had great sympathy for Hare but ultimately preferred the SNTV due to objections with the “chancy” nature of distributing the surplus votes, on how single-member districts would paradoxically destroy true spokesman of important local interests” by “parochializ[ing] the representation” too much; Heywood, *The Representation of Minorities: A Practical Plan* (Bristol Selected Pamphlets, 1884), 3.

¹³⁹⁰ *Report of the Boundary Commissioners for England and Wales, 1885. Part One: Counties* [C.-4287] (London: Eyre and Spottiswoode, 1885), 7; Jones, *The Politics of Reform, 1884*, 9.

¹³⁹¹ On this point see Roberts, “Resisting Arithmocracy,” 398.

¹³⁹² Again, drawing on the parallel with toleration, we might say that there was an argument here about the inefficacy of compulsion to produce the *true* local ties that it was desired to represent in the first place. See e.g. Hare’s statement that “the system which really destroys the wholesome influences of locality is that which has long been, and still seems to be, most in favour with popular reformers, – grouping some boroughs, disfranchising others, here severing cities and counties, and there adding a score of villages to some small borough. The component parts are rather repelled than attracted by such undesired combinations. It is proposed to amend this anomalous patchwork, and allow the country spontaneously and without any arbitrary rule, to recover its natural subdivisions...”; *Election of Representatives*, xii.

¹³⁹³ Ibid., xii.

The Hareans’ conviction of the counterproductiveness of using involuntary constituencies to achieve inclusion

The PR reformer's insistence on the continuing place of locality within his post-territorial representative system brings us to two further issues. First, what it meant practically that "a real living society" like "Manchester" would continue to figure in the Commons was that *candidates* who devoted themselves to these local interests or who expounded ideas native to the place would be returned¹³⁹⁴; unlike in list systems, where parties with centralized platforms are the objects of the vote, in STV one voted for candidates who might prioritize local issues over the concerns of the national party. Second, MPs, as we have stressed repeatedly, were returned by constituencies which were constructed by otherwise unaffiliated individuals opting to support the same candidate; STV was, therefore, formally agnostic about sociology, including no referents to groups within it. But this formal agnosticism and individualism did not, obviously, restrain Hare and his ilk from invoking substantive sociological premises in explaining how their proposals would work. "Locality" was, after all, a corporate category like the "classes, interests, and opinions" compound that featured in the variety-of-suffrages literature. Their confidence that due, "wholesome" localism would endure in

for local attachments or specific interests had a further dimension. This was the observation that in the context of modern politics with its pluralistic and conflictual character any endeavor to erect electoral structures based on homogeneous groups would itself give way to divisions in the contest of different visions and ambitions: in 1832 "some constituencies were retained, framed or modified, upon the supposition that they would, in all circumstances, support what were conceived to be special interests....The idea of the constituency as the constituted exponent of an interest having been once received, excluded the idea of personal representation within that constituency, and therefore led to the consequence, – that if persons not governed by the prevailing interest found their way within the prescribed limits, it was necessary, in pursuit of the representation of interest, to exclude such intruders, as far as it could be done, from the electoral power. As the law, however, did not, and could not, adopt, as an electoral qualification, a test of fidelity to the special interest contemplated, it is not found possible to exclude from the constituency some who are guided by other motives, and form an antagonistic class. The electoral bodies which are regarded as the exponents of special interests are thus exposed to internal conflicts, which render their action more or less uncertain....The territorial condition must be one of two things, – a source of strife if it succeeds, – or a cause of weakness if it fails. It is deserving of the most profound consideration of all who desire to perpetuate any definite political principle, whether it is possible to insure it for a geographical ascendancy; and. Whether there are any means of promoting its maintenance so certain and lasting as would be found in a consistent adoption of the sole and simple principle of personal representation"; *ibid.*, xxvi-xxviii.

Intriguingly, this same argument would be deployed by Weber as part of his bitter attack against the "politically infantile littérateurs" who advocated "electoral corporations" based on "'organic' structures" in society and the economy. These "misconceived projects" would fall prey to "the autonomous operation of political interests": "when herded together in such electoral corporations, the supposed bearers of 'professional solidarity' would be set at one another's throats by denunciations and boycotts" and an "attempt to compel them to unite...would be a purely mechanical compulsion which would put an end to their inner life." The only way to have interests, occupations, or classes play a role in representative politics was, Weber concluded, to leave them to fight for adherents by "*free* recruitment," "free, independent initiative." See Weber, "Suffrage and Democracy in Germany," 88-97.

¹³⁹⁴ Percy Greg, "Redistribution," 814.

a PR-chosen Commons, then, reopens the question of the relationship between their individualistic electoral method and their image of their society. How were these voluntary constituencies supposed to relate to social realities beyond the hustings? In other words, what were the objects which it was imagined would actually be represented under STV?

d) The Objects of the Vote and of Representation

As with the other schools of representation, then, with the question of the *objects of representation* we have arrived on the terrain of sociology. Before tackling the social imaginary undergirding personal representation, though, we need to take a moment to reckon with an institutional facet which has been present in our discussion but not emphasized: that the *object of the vote* was a person, not a party. The way to the sociological issue is through this technical feature.

That Hare and the Victorian PR movement preferred that votes be cast for candidates was overdetermined. For one, there was the weight of constitutional history; Britain had not seen votes be cast for anything other than persons. There was also the fact that, unlike in Continental Europe where list systems flourished very quickly,¹³⁹⁵ the British never seemed to really be able to conceive of parliamentary election as anything else than choosing the *person who should occupy the seat* in the Commons; this singleness of view about what a representative election could possibly be contributed to the near-universal hostility in Britain to indirect election,¹³⁹⁶ which equally violated this notion that there was only one way to fill an assembly, in contrast to the continent where both indirect election and list systems had much greater purchase. There was, moreover, deep vexation with the perceived increase in partisanship spanning more or less the whole of the second half of the

¹³⁹⁵ Hence it is importantly not an anachronism to say that Hare *preferred* candidates over parties as the object of the vote; Hare and all conscientious Victorian reformers were aware of the progress of list systems elsewhere; see e.g. Hare, "Minority Representation in Europe," *Journal of Social Science*, vol. 3 (1871), 185-91.

¹³⁹⁶ See e.g. Brougham, *The British Constitution*, 61, 68-9; Mill, *Considerations*, ch. 9.

century and including many commentators who were not especially interested in the mechanics of reform.¹³⁹⁷ Finally, making parties the object of the vote struck many as obviously violating the prized tenet of “the freedom of the elector.”¹³⁹⁸

And yet, despite the tight hold exercised by STV, there had always been a countercurrent, if a weak one, of support for the list system. Interestingly, perhaps the most incisive of these criticisms – and the one to be taken as exemplary for our purposes – came from Ireland, a country which has retained STV to the present day. James Creed Meredith, an Irish Supreme Court Justice, literary figure, and translator of Kant, was one of the few within the British Isles to prefer list systems over STV. Meredith’s attack on STV as not “even theoretically the best system...[because] it rests on principles and assumptions that are entirely inapplicable to Parliamentary elections” was multi-pronged, and other pieces of it will be addressed in the forthcoming chapter, in particular, the moral and practical reasons that informed his rejection of the anti-party thrust of PR theories of “English manufacture.”¹³⁹⁹ For now what is significant is that he saw STV as inconsistent with “the ideal of representative government...to produce a ‘reduced map’ of the country in its political aspect.”¹⁴⁰⁰ The attribution of mirroring properties to it rested on “a certain self-deceit.”¹⁴⁰¹ It was “only nominally and contingently a system of proportional representation.”¹⁴⁰²

Why did Meredith believe that STV, which is often taken as the example of “pure PR” by modern scholars, was in fact unrelated to proportionalist aspirations and failed the standard of

¹³⁹⁷ See e.g. JF Stephen, “Parliamentary Government [1], 5-7; Froude, “Party Politics,” *Fraser’s Magazine*, vol. 10, no. 55 (July 1874), 1-18. An array of different positions converged on the frustration with parties; see e.g. Hawkins, *Victorian Political Culture*, 315.

¹³⁹⁸ Lubbock, *Representation*, 61.

¹³⁹⁹ Meredith, *Proportional Representation in Ireland*, xiv, 5.

¹⁴⁰⁰ *Ibid.*, 8-9.

¹⁴⁰¹ *Ibid.*, xii.

¹⁴⁰² *Ibid.*, 58.

representativeness in the election of assemblies? The reason, he argued, that STV was “not, properly speaking, a system of proportional representation at all” was that it formally “takes no notice of parties.”¹⁴⁰³ Yet “what is representation which is proportional proportional to? Apparently to the true strength of parties.”¹⁴⁰⁴ In a time of near-universal suffrage and close to equal districts in which the creation of electoral rules to take account of classes and interests, the only entities which remained for electoral systems to mirror were parties. Consequently, when STV proponents argued that first-past-the-post arrangements were distortive, they could only do so by pointing to the departures in allocation of seats to parties from what they would have earned if parties were awarded seats according to their percentage of the vote share; as Meredith put it, “the party point-of-view is inevitable on any system of proportional representation.”¹⁴⁰⁵ Since parties were, so to speak, the last standard left after all extra-electoral mirroring criteria had been sidelined, the list system alone was a rational choice for anyone who still valued the alignment between assembly and nation: “We see, therefore, that just as the fairness of the single transferable vote is ultimately tested by an appeal to the list principle, so in practice, whether a list system is explicitly adopted or not, it all comes down to a question of lists in the end. A list-system is plain and frank: the transferable vote is complicated and treacherous.”¹⁴⁰⁶ Disciples of Hare were really pursuing something quite different from proportionality, since proportionality, as the course of the nineteenth century had revealed, could only mean proportionality with respect to parties.

One argument which Meredith intimated but did not precisely articulate would have pressed his point about the non-proportionalism of STV even further. “[Hare’s] object,” he cited a Royal

¹⁴⁰³ Ibid., 56.

¹⁴⁰⁴ Ibid., 56.

¹⁴⁰⁵ Ibid., 60. Meredith’s point is well supported by the argumentation of the Proportional Representation Society’s own journal, *Representation*, in the years around Meredith’s book.

¹⁴⁰⁶ Ibid., 78.

Commission as saying, “was to secure the return to Parliament, not of the parties or interests, but of the persons most desired by the electorate as a whole.”¹⁴⁰⁷ The return of the persons *most desired*, however, was not equivalent to the return of persons *proportional to the desires of the electorate to be represented by them*. The transfer of surplus votes was intended to make each MP the representative of an equal slice of the electorate, but to do this it had to contravene the inequalities in first-preference-level support among candidates; Gladstone, for example, despite the fact that he might receive 30% of the first-place votes, received only 1/658 of the voting power in the Commons. Proportionality did not seem to enter into this equation. According to Meredith, STV was a way of divining who were the most preferred “men as men,” but this project was utterly unrelated to the goal of “primary importance” for twentieth-century “political elections,” which was to give to each party the exact strength within the assembly that its support in the nation warranted.¹⁴⁰⁸ All that STV did was generate a list of the most desired politicians, and therefore vastly unfit for an era in which the basic political question was which party or coalition of parties ought to form the government.

Note that this characterization of STV as an unproportional method of representation depended on the acceptance of parties as the sole units according to which the mirroring capacity of an electoral system was to be judged. To Meredith, it was so clear that the oft-cited mirroring or proportional qualities of the system did not in truth apply that he treated them as little more than a propaganda ploy for the reformers and saw the only basis of real support for it as lying in a notion

¹⁴⁰⁷ Ibid., 56.

¹⁴⁰⁸ Ibid., 57. In practice, Meredith thought, the simple fact that STV’s focus on persons differed from a rightful concentration on parties actually understated the extent of the damage the system would do. He endorsed the Royal Commission’s disapproving assessment that the conjunction of reinstating geographical divisions and the effect of late preferences in returning members would actively lead to a distortion in the representation of parties: “The balance under the Transferable Vote is the net total of the balances obtained in a number of multi-member constituencies, and these balances depend upon late preferences. The apparent verdict of the country will, therefore, be determined by the least satisfactory criterion which the system provides, for a considerable number of voters will not exercise their later preferences at all, and of those who do many will be influenced by other than party motives”; *ibid.*, 57. This assessment was part of a broader story about how STV fostered a fuzzy centrism in the national mind that led to intellectual-political stagnation.

of the “freedom which it gives to the elector.”¹⁴⁰⁹ If one did not share this view about the fundamental representative status of parties, however, it was not obvious why one needed to accept the Irish jurist’s conviction of the superior descriptiveness of list systems – and this would hold true independently of whether one agreed *in toto* with the Harean conception of freedom. In other words, Hare had reasons for making candidates rather than parties the centerpiece of his reform that were not merely reducible to a particular argument about what liberty consisted in but which themselves stemmed from sociological premises. Although Hare’s great innovation of voluntary constituencies formed out of quotas for candidates was formally asociological, his conviction of its beneficial character was attached to his understanding of his society. This does not mean, however, that Meredith’s skepticism was entirely off-base, for Hare’s recommendations outlived much of the sociology with which they were originally linked and which gave his claims about mirroring (as distinct from freedom alone) plausibility.

Although he did not recognize it as such, the sociology underlying Hare’s entrance into the field of electoral reform consisted of two strands, and it is not clear how well the two cohered. The first is what Floyd Parsons has called his “premise of pluralism.”¹⁴¹⁰ The paragraph from the *Election* which best lays this out deserves quotation in full:

A perfect *representation* is plainly inconsistent with the exclusion of minorities; but the subject of representation would be very inadequately conceived, if it were regarded as a mere question between majorities and minorities. The formation of electoral majorities and minorities is no more the natural means of arriving at political representation than it would be a natural result of any other association that it should be divided into two parties, one perpetually labouring to counteract the wishes of the other. The order and the occupations of mankind, — the distribution of population, and the supply of its necessities, are all provided for by physical and moral laws operating on the diversities of nature and of character which are found amongst men. These differences preserve the harmony and the vitality of social life. In political sentiment there is not less variety than in the other motives of human conduct, and abstractedly it would be no more likely that the political opinions of the electors of a borough should fall into two or three antagonistic divisions, than that they should be composed of twenty, fifty, or a hundred distinct views or conceptions. The

¹⁴⁰⁹ Ibid., xv.

¹⁴¹⁰ Parsons, *Thomas Hare and Political Representation*, 142.

dissimilarity would be much more probable than the similarity. Opinion and action in politics would be as various as opinion and action in other sciences, if there were not causes that enter into political bodies, and create a disturbed and unhealthy movement, provoking antagonistic divisions.¹⁴¹¹

In keeping with the general bent of his thought, this observation about the wide extent of political diversity was a historicized one: “the extension of knowledge and the progress of civilization open the door of inquiry, prompt activity of thought, encourage diversities of opinion, and thus lead the way to social improvement.”¹⁴¹² Contemporary Britain had arrived at such a position in the march of progress that ideological diversity was now the norm.¹⁴¹³

A few points should be stressed about this first strand of Hare’s sociology. First, it was concerned with *opinion*; it was above all a sociology of political ideas, an intellectual sociology. PR was preferable because it was respectful of “the natural and unrestricted operation of the variety of *opinions* and *sentiments* existing among a free people”; it was in view of “the varieties of *opinion* and *feeling*” that his reform plan was required.¹⁴¹⁴ And the modern magnitude of ideological diversity was not just a sort of freestanding social fact, but was itself an expression of the deep epistemological truth that “many sided all great subjects are”¹⁴¹⁵ – a view which, notably, he had espoused years before *On Liberty*’s appearance and the beginning of his friendship with Mill.

¹⁴¹¹ Hare, *Election of Representatives*, xxix-xxx.

¹⁴¹² Ibid., 10. This greater diversity in opinion in the contemporary world was linked with the fact that there were simply more *opinion-holders* than ever before. The spread of opinion was, indeed, to a large degree simply what progress meant: “The progress of education and knowledge, the habit of reading, and of free and broad discussion, have vastly increased the number of the people who are capable of forming opinions for themselves, and communicating with others of like sympathies”; Hare, “Just and Equal Distribution of Seats,” 203.

In giving diversity of opinion this modern accent he resembled, among others, Wilhelm von Humboldt, the author who gave *On Liberty* its epigraph; Humboldt judged “an infinitely richer and more satisfying moral and intellectual variety” to distinguish modern Europe from antiquity or the Middle Ages; Humboldt, *The Sphere and Duties of Government*, trans. Joseph Coulthard (London: John Chapman, 1844), 17.

¹⁴¹³ As in the treatment of territoriality, this was thus another respect in which Hare was happy to affirm that “the traditional method of filling the House of Commons” was “suitable...in earlier times” but not now; *Election of Representatives*, 75.

¹⁴¹⁴ Hare, “Individual Responsibility,” 358; *Election of Representatives*, 16. My italics.

¹⁴¹⁵ Hare, *The Machinery of Representation* 42.

Second: this notion of the diversity of opinion marked a divergence from the theory of electoral variegation. As noted above, opinion did have a kind of primacy on the variety-of-suffrages outlook, but Hare – at least this side of Hare – differed from the adherents to this school in their breathless awe at the extent of pluralism.¹⁴¹⁶ The perception of a vast domain of diversity in beliefs was another crucial reason why freedom was such an important value in PR but not in the variety of suffrages. Both schools upheld that “Parliament should be a deliberative assembly” and thus that all relevant points-of-view should be included.¹⁴¹⁷ For the variety-of-suffragist, though, this category of relevant points-of-view was roughly coextensive with and bounded by significant social cleavages, while for Hare they were potentially inexhaustible and therefore any constraint in the electoral system was likely to be prejudicial to some number among the great “diversities of thought and sentiment.”¹⁴¹⁸ The combination of the focus on opinion and the Millian epistemic conviction about the many different lights in which public questions might be approached effected what we might call a sort of *internalization within the elector* of Sidgwick’s point in the previous chapter about the different lines according to which the opinion of the body politic might be divided. In an open system electors would “look into and consider the reasons” behind “various appeals” which would reach their ears, and the “real representation” thereby produced in the assembly would constitute a mosaic of the “varieties of expression that have in modern times been called into existence.”¹⁴¹⁹

The third important point about this sociology of opinion was that, in its emphasis on the great scope of ideological fragmentation, it seemed to take a strong stand on the question which has cropped up throughout this dissertation of the connection between class and opinion: namely,

¹⁴¹⁶ “Infinite variety of character and temperament” was observable even among “opinions which approve themselves, and sympathies which are common to any considerable number of minds”; *ibid.*, 26-7.

¹⁴¹⁷ Lubbock, *Representation*, 64.

¹⁴¹⁸ Hare, *Election of Representatives*, 16.

¹⁴¹⁹ Hare, “Reform Bill of the Future,” 84; *Election of Representatives*, 128.

running counter to much of the variety-of-suffrages corpus, classes appeared here to be heterogeneous in opinion. An “endless variety of thought and intelligence” was inconsistent with the assumption that common class affiliation implied ideological agreement.¹⁴²⁰ This postulate of the ideological polyvalence of classes fit awkwardly with a program of class representation,¹⁴²¹ and PR proponents could sound like Kinnear in their espousals that “working men were as much divided in opinion as other classes.”¹⁴²² As the overlap with Kinnear indicates, this anthem could indeed be sung so loudly that it seemed to undercut one of the justifications for preferring PR to simple territorial democracy; if no “swamping” from the lower class could be anticipated because of the infinite array of differences in society, then it also looked unlikely that there could be any majorities or large pluralities which could claim enough victories in separate districts to monopolize seats or otherwise render the Commons seriously less inclusive.¹⁴²³

Given this thesis of the naturalness of an almost kaleidoscopic diversity of opinion, it might look as if Harean personal representation was a solution without a real problem to address; after all, the diverse democrats of the previous chapter were satisfied that a more humdrum degree of diversity could be adequately accommodated by universal suffrage under plurality-rule procedures. This thought is misleading. The truth is, rather, that the locus of the problem had simply been displaced from how it was situated by the variety-of-suffragist. It was not here the brute numbers of a majority social group – the working class, or Irish Catholics – that were the primary cause of alarm. Instead, parties were. Since on this view a great class could not be the enemy of the accurate

¹⁴²⁰ Hare, “Representation of Every Locality and Intelligence,” 528. He went on to quote Ruskin’s *Modern Education*: “Among all men, whether of the higher or lower orders, the differences are eternal and irreconcilable between one individual and another.”

¹⁴²¹ It was, for instance, a major reason why Gergonne found Flaugergues’s plan of class representation inadequate; Gergonne, “Arithmétique Politique,” 283. As we saw in chapter three, though, it was not decisive against it.

¹⁴²² Leslie Stephen, *Life of Fawcett*, 215. Stephen was paraphrasing Fawcett here, not speaking in his own voice.

¹⁴²³ *Ibid.*, 215. And see note 1368 above.

translation of opinions due to the fact that classes were not conceived as corresponding to ideology in a strong way, parties appeared as the main enemies of proportionalists. They – and their tendency to duopoly in plurality-rule arrangements¹⁴²⁴ – were what created the defects of descriptiveness, compressing the domains of thought and sentiment that could make their way into an assembly that ought to have contained the full spectrum of shades of opinion in society. To Hare’s disciples, those who accepted the two-party dominance of first-past-the-post were committing the same sort of error that Mackintosh and the Whigs attributed to Benthamites – that is, that they had a wrong notion of the electoral procedures that would yield a representative regime because they underappreciated the extent of diversity in their society.¹⁴²⁵

While this was a compelling argument against the heritage of plurality-rule, it was less obvious that it dispensed with the challenge posed by list systems. Advocates of the latter did not tend to argue that their system necessitated that there be two parties in contention; on the contrary, it is a frequent claim that parties proliferate under them. Yet it did still count against the list alternative, and for two reasons. First, even if list systems were better able to integrate more than two parties than plurality rule was – if, say, they made room for the four or so parties which thrived briefly during the aftermath of the party disintegration caused by repeal of the Corn Laws,¹⁴²⁶ the period of parliamentary governance on which Hare looked most fondly – it was improbable that even the party system under list could be as pluralistic and open as this sociology demanded.

¹⁴²⁴ E.g. Droop, “Political and Social Effects,” *passim*; Goldwin Smith, “The Political Crisis in England,” in *Essays on Questions of the Day, Political and Social*, second edition (London, Macmillan, 1897), 103, 110-1; Hare, *Election of Representatives*, 10.

The first-mentioned essay here has been called a landmark in electoral theory for containing the first articulation of Duverger’s Law; William Riker, “The Two-Party System and Duverger’s Law: An Essay on the History of Political Science,” *American Political Science Review*, vol. 76, no. 4 (1982), 753-66. It seems to me, however, that Hare and other proportionalists had already been operating with it in mind.

¹⁴²⁵ See e.g. Droop’s allegation that one of the greatest obstacles to PR’s implementation was the “widespread belief that our English division into two parties...is not due to artificial causes” but to nature; Droop, “Political and Social Effects,” 25. And see note 1269 above.

¹⁴²⁶ Philip Salmon, “The House of Commons, 1801-1911,” in *A Short History of Parliament: England, Great Britain, the United Kingdom, Ireland & Scotland*, ed. Clyve Jones (Woodbridge: Boydell Press, 2009), 265.

Remember that the depiction of the contemporary state of opinion by Hare and his cohort was one made up of innumerable gradations, and not of a set of discrete blocks in rivalry with one another. Second, as will be attended to in the “moral” discussion over the value of parties in the upcoming chapter, STV exponents objected not just to the fewness of parties but also to their rigidity. And yet the list system threatened, in their eyes, to put even more tools in the hands of wire-pullers to enforce narrow, inflexible platforms and to suppress dissent and intercourse of ideas within the party.¹⁴²⁷

In addition to being a driver of the anti-party orientation of Victorian PR, one other aspect of this first sociological strand warrants attention. This is an ambiguity running through it concerning the kind of existence which ideological diversity had. Hare and other PR theorists insisted on the naturalness of extensive diversity, but it was less certain whether it was natural in the sense that (a) *in a proper electoral system* it would arise or that (b) it was *already there* in the modern world. In other words, was PR going to *generate* or *promote* the diversity of opinions, or would it merely *translate* it into the Commons. This was, quietly and probably not visibly to the Victorians themselves, a fissure separating different camps within PR on the question of how electoral politics related to the intellectual life of the nation more broadly. For the most part, Hare came down on the side of (b). In the quotes above, he treats the great array of political beliefs as a straightforward empirical fact, akin to what he considers the indubitable diversity in aesthetic tastes and life-projects; his surprising indifference to the Tocquevillian-Millian idioms of “conformity” and “majority

¹⁴²⁷ E.g. Hare, “Minority Representation in Europe,” 188-9; Williams *Proportional Representation and British Politics*, 63; Humphreys *Proportional Representation*, 201-2.

This was particularly offensive to mainstream Victorian PR supporters who, especially before the Liberal crisis over Ireland but also even after, mostly identified themselves as some species of Liberal – it was a trope in the Victorian era that, while there was only one way to be a Conservative, there were many ways to be a Liberal, since Liberalism was the “party of Progress.” Consequently, it was argued that Liberals ought especially to cherish STV for its power of quelling the dynamic toward constriction and over-disciplining of party under either plurality-rule or list systems. See e.g. the testimonials of several leading minds of PR, including Hare, included in *Why I Am a Liberal: Being Definitions and Personal Confessions of Faith by the Best Minds of the Liberal Party*, ed. Andrew Reid (London: Cassell, 1885). And see Mill, Speech on W.E. Gladstone [1], 21 July 1866, in *CW* 28, 97; Gladstone, “Electoral Facts,” *The Nineteenth Century*, vol. 4, no. 21 (Nov. 1878), 961, 968; Lubbock, *Representation*, 25.

tyranny,” mentioned at note 1246, is further confirmation of this interpretation. Insofar as sociology was concerned, PR’s task was important but modest: to bring diversity into the parliamentary arena.

It is arguable that side (a) – the more intellectually-sociologically ambitious side – also crept into Hare, for there are some passages in which he writes as if PR would *act on* the distribution of opinions itself and not simply reflect it better.¹⁴²⁸ Yet on balance it seems safest to say that Hare meant to stay on the more modest terrain. Other writers, on the other hand, were willing to make weightier claims about the stakes of PR. Courtney, for instance, saw PR as a matter of ensuring the possibility of the variety of opinion *tout court*; it promoted ideological pluralism by providing the atmosphere in which less popular opinions could live, so to speak:

And what is the effect to be apprehended [from single-member districts with a two-party system], not only on the representation of the people in Parliament, but on the condition of political life among the people themselves? Those who are not ready with the shibboleth of party must stand aside. Reduced to inactivity, their sterile existence ends in death. The springs of vitality are stanchied. Removed from the sphere of political energy they suffer, but the life of the country suffers with them.... Variety of representation is wanted, not only that Parliament shall exhibit the competitive opinions of the nation, but also that opinion shall have everywhere the freedom and play of life.¹⁴²⁹

PR protected the realm of public opinion(s) from constriction and “death.” As he elaborated in another essay, it could accomplish this promotion of ideological diversity in virtue of a kind of cascading effect which the state of the parliamentary forum had on other arenas of thought; the “emancipation of political thought” would trigger a “move onwards” towards greater “liberty” in “literature,” “conversation,” and even “silent speculation.”¹⁴³⁰ Such a “great thing” would it be for PR to “set the nation free, to liberate the action of each political function, to give the opportunity of vitality and power to every new birth of political thought” that Courtney was able to contemplate unafraid the further expansion of the suffrage; democracy with PR was not a frightening prospect

¹⁴²⁸ See e.g. Hare, *Machinery of Representation*, 42.

¹⁴²⁹ Courtney, “Seats Bill,” 31.

¹⁴³⁰ Courtney, “Political Machinery,” 89.

for the champion of liberty and diversity.¹⁴³¹ Courtney had a grandiose vision by which PR would turn Britain into something approaching a utopia of unshackled thought and expression, and in consequence he was comfortable disregarding the dire predictions about popular government's intolerance and inhospitality to new thought which Maine and his ilk would make over the last quarter of the century.

This dimension of Courtney's thought – the celebration of PR's potential to *act on* the creation and distribution of opinions in society – added a wrinkle to the already fraught issue of the descriptive status of PR. Typically, Courtney spoke of his aim as a “representative chamber [that] would be a trustworthy mirror of the mind of the nation.”¹⁴³² But in modern parlance, we might say that he ran into an “endogeneity” problem here – by his own admission, the electoral system was not independent of the “mind of the nation” that it mirrored. In truth, then, Courtney was posing the question of the desirability of PR not in the form, *ought the electoral system to be an accurate mirror of the national mind?*, but rather in the form, *what kind of national mind ought we to want to be mirroring?* What Courtney desired was, at its most foundational level, a free national mind – the intellectual-sociological impact of PR was to him its most treasured attribute.

Alongside this first sociological strand ran another throughout Hare's work. This appreciation of the natural diversity of opinions and the endeavor to represent (and perhaps even generate) thought transcending the constraints of party was only one of the ways in which he related his scheme to a sociological image of the country. The other was a more traditional descriptivist preoccupation with classes and interests. “The sole and simple principle of personal representation,” when inserted into this matrix of sociological reasoning, seemed to differ from variety-of-suffrages

¹⁴³¹ Ibid., 89-90.

¹⁴³² Ibid., 89.

schemes only in technique.¹⁴³³ Rather than an exaltation of diversity and freedom of opinion in themselves or a move toward the subjectivization of politics,¹⁴³⁴ its animating insights looked very similar to those of a Bagehot – hence the fact, which we have noted, that a kinship between the two sorts of plans and their authors was often perceived. Indeed, this kinship could exist within a single author: Lecky, who seems to have always regarded the variety of suffrages as the best combination of both traditional English principles and universal principles, championed “Hare’s system” in the 1890s for “secur[ing] the representation of all considerable *minorities*. Under no other system would the representative chamber reflect so truly...the various *classes, interests, and opinions* of the nation.”¹⁴³⁵ On this view, PR theorists’ fondness for the terminology of “minorities” strikes one as a lexical rather than a substantive shift in the norms underlying the scheme: this is nicely exemplified in the writing of Wordsworth Donisthorpe,¹⁴³⁶ who despite being an “individualist” treated the “representation of interests” and the “representation of minorities” as equivalent titles for a proper reform that would leave behind the “representation of areas.”¹⁴³⁷ The more traditional characterization of the objects of representation which appeared in these later texts was authorized by the way in which Hare himself had written of the units of representation of his plan. The inclusion of especially “interests” and often still “classes” functioned in the Hare lexicon as the metric for determining the justness of a representative system; the transcendence of territory was sometimes lauded for giving a truer representation of classes than any preceding arrangements had

¹⁴³³ Hare, *Election of Representatives*, xxviii.

¹⁴³⁴ Rosanvallon, *Peuple introuvable*, 130-47.

¹⁴³⁵ Lecky, *Democracy and Liberty*, vol. 1, 269. My italics.

¹⁴³⁶ Donisthorpe was one of the truly amazing Victorian polymaths. A self-proclaimed “philosophical anarchist,” he wrote voluminously to apply Spencerian evolutionary-libertarian principles to many legal-political subjects. He was also a barrister, an important figure in the world of competitive chess, and the inventor of an early device for taking motion pictures. On Donisthorpe, see M.W. Taylor, “Donisthorpe, Wordsworth (1847-1914),” *Oxford Dictionary of National Biography*, Oxford University Press, 2004, [<http://www.oxforddnb.com.ezpprod1.hul.harvard.edu/view/article/47851>].

¹⁴³⁷ Donisthorpe, *Individualism*, 53. This treatment of the terms as synonymous contrasted with the disjunction between the two drawn by Harris, discussed above.

done.¹⁴³⁸ In this light it should not be surprising that Mill himself flitted back-and-forth between the first position described here of preoccupation with the great diversity of opinions – it was in this register that he spoke of “every mode of thinking which is shared by numbers” as “entitled” to a legislative presence¹⁴³⁹ – and this second one of a more conventional (he called it “conservative”) descriptivism according to which the “variegated character” of the assembly connoted the presence of “advocates” for all “interests” and “classes” as opposed to permitting the “most numerous class” simply to “swamp and politically annihilate all other members of the community.”¹⁴⁴⁰ For Mill as for Hare PR served as *both* the parliamentary machinery for the intellectually, discursively freewheeling society of *On Liberty* in which even the most unpopular views received a hearing¹⁴⁴¹ and an electoral plan that respected and carried on “the good points of class representation.”¹⁴⁴²

These two sociologies were not exactly logically incompatible, but there was a certain tension between them. This was due to the fact that endorsing class representation depended on the conviction that each class needed its own MPs, that due to the limits of “intelligence and imagination” only those belonging to the class in question could “understand” its “wants”: a good Commons must “take account of, the dispositions and circumstances of every class in the population. If any one class is dumb, the result is that Government is to that extent uninformed”; “a representative assembly of the Commons, without this element [of ‘persons able to view all

¹⁴³⁸ It “permitt[ed] every class to associate as the views of its members may dictate, without restraint of any boundary or district, and free therefore from the assaults of any adverse bodies who may invade their territories, or seek to undermine or usurp their franchise”; Hare, *Machinery of Representation*, 35. And see *Election of Representatives*, e.g. 6, 54, 233. See also e.g. Fawcett, *Leading Clauses*, 32; Lytton, “Report on the Election of Representatives for the Rigsraad,” 19.

¹⁴³⁹ Mill, *Considerations*, 507.

¹⁴⁴⁰ Mill, Speech on Personal Representation, 183; *Considerations*, 465; “Recent Writers on Reform,” 363.

¹⁴⁴¹ See e.g. Mill, *On Liberty*, 229; Hare, *Election of Representatives*, 233.

¹⁴⁴² Mill, *Considerations*, 465.

questions from *their* side'] is grossly defective."¹⁴⁴³ For MPs to be identified with particular interests or classes, however, there had to be a group coherence behind these labels, a perspective proper to "advanced artisans" or "agricultural laborers" or "educated professionals." But this group coherence sat ill with the pronouncements which seemed to imply that similarity of socioeconomic position was not deterministic of political conviction.

Recognizing the pervasiveness of this classical sociological strand in PR discourse is significant because, if the underlying sociology resembled that of the variety of suffrages, then the advent of PR marked much more a technical than a substantive-normative change in representation. And this is precisely how Albert Grey, the Fourth Earl Grey, understood it. Grey clearly painted the lineage of PR as lying in the older pattern of inclusion of diverse groups. "So long as there was a wide difference between the borough and county franchise, and a great variety in the size of the constituencies, the principle of community representation, as opposed to the individual, secured to us the variety in the representation which the different interests of the country demanded."¹⁴⁴⁴ The trouble was that "as soon as we establish in every constituency the same uniform electorate, the representation of localities no longer supplies us with any security for variety of representation....We have hitherto secured this by the plan of variety of franchise and local representation."¹⁴⁴⁵ In 1884, though, with uniformity and an extensive suffrage about to be enacted, a different technique had to be adopted to pursue the same goal: "It by no means follows that because a particular method of election secured us a fairly representative House when we had a variety of franchise that it will do the same when we have a uniformity of franchise."¹⁴⁴⁶ In these circumstances of "uniform franchise

¹⁴⁴³ Courtney, "Representation of Minorities," 144-5; Hobhouse, *Liberalism*, 113; Hare, *Election of Representatives*, 37. See also Mill, Speech on Personal Representation, 183; Fawcett, "Mill's Treatise," 100.

¹⁴⁴⁴ Albert Grey, "Proportional versus Majority Representation," 937.

¹⁴⁴⁵ *Ibid.*, 937.

¹⁴⁴⁶ *Ibid.*, 937.

over the whole kingdom,” a “good House of Commons approximately reflecting the different interests of the country” could only be secured by abandoning territorial, communitarian methods in favor of “individual” methods.¹⁴⁴⁷ But it was still by the justice it did to “interests,” conceived much as his father and grandfather had done, that the machinery of representation was to be evaluated. Tethered to the traditional sociology of Britain in this fashion, Mill, Hare, Albert Grey, Lubbock, and others could argue that they were presenting the next step in a continuous evolution of the British electoral system, the phase suited for a period when “anomalies in the representation” were being “swept away.”¹⁴⁴⁸

If PR were just the latest stage in the representation of classes, interests, localities, and groups of other sorts, then its formal individualism did not in fact need to be thought of as violating or distorting a true representation of society and public opinion considered in the mainstream communal way as a composite entity the building-blocks of which were more or less cohesive communities of interest and sentiment.¹⁴⁴⁹ Thus as much as its “individualism” was cause for praise insofar as every other system set the individual voter in a “degrading subjection,” this unshackling of the individual was not tantamount to a positive assertion of an atomistic view of the public opinion.¹⁴⁵⁰ PR granted freedom to the individual *qua elector*, but it did so with the knowledge that individuals were in fact associative creatures and that their selection of candidates would reflect

¹⁴⁴⁷ Ibid., 937.

¹⁴⁴⁸ Hare, *Machinery of Representation*, 51. And see e.g. Bruce Kinzer, Ann Robson, and John Robson, *A Moralist In and Out of Parliament: John Stuart Mill at Westminster 1865-1868* (Toronto: University of Toronto Press, 1992), 105-7; and the appendices to Lubbock, *Representation*, 67-75.

¹⁴⁴⁹ Although his focus is rather different than mine, Bromund notes the communitarian flavor of the political thought of 1880s PR activists; Bromund, “Uniting the Whole People,” 78, 82.

¹⁴⁵⁰ Hare, “Note,” 105. On the territorial front Hare put it this way: “by enabling every unanimous quotient of actual voters to elect a member in the national representation, we not only avoid any disfranchisement, and preserve the corporate action of all counties, cities, and boroughs, but permit any number of additional boroughs to be created and enfranchised, provoking amongst them all a generous rivalry in the manifestation of public spirit”; “Reform Bill of the Future,” 84. Or as he put it in a rare moment of succinctness: “individual independence consistent with local and territorial interests, but not *à converso*”; *Election of Representatives*, xliii.

group affiliations and influences. The communal nature of public opinion was indeed a presupposition of all of Hare's work. This comes through in a weird passage in which he conceded that his system could look as if it instantiated an "anarchic" principle which would reduce the country "to a state of natural society" so long as one forgot the saving truth of "the natural tendency of association" by which men's thoughts and feelings were shaped by "innumerable knots, linked and tied by the countless affinities and tastes which attract men to their fellows."¹⁴⁵¹ "The system of individual independence" was therefore not an expression of an individualistic or atomistic social ontology. Instead Harean representation reflected an organicist or evolutionary (to use the terms loosely) conviction that the electoral system should foster the natural emergence and adaptation of different social groups, opinions, and identities in a progressive society where the "old unity" and "traditional relations" could not simply be imposed.¹⁴⁵²

Before turning to the last piece of the Harean machinery, the transfer, it is worth making a final point about the sociological underpinnings of Hare's theory. This is that noting the presence of quite traditional sociological categories in his thought helps to clarify an area in the secondary literature that is rife with confusion. It is often asserted that the early PR movement was "elitist."¹⁴⁵³

¹⁴⁵¹ Hare, *Election of Representatives*, 80-2. And see Williams's assertion that the growing purchase of "collectivism" in social and political thought since Mill's time was entirely consistent with support for PR; *Reform*, 5.

¹⁴⁵² Ostrogorski, *Democracy and Political Parties*, vol. 1, 110.

¹⁴⁵³ Parsons and Alan Kahan have traced this "elitism" to the influence of Coleridge's concept of the "clerisy." In his most famous political work, Coleridge reconceived the national church as a "permanent learned class" (the clerisy) devoted to the maintenance of the highest standards of culture and learning. Hare's aspirations to a Commons containing the elite of the nation have been supposed to be consciously Coleridgean ones.

This is misleading. While it seems likely that Hare was aware of Coleridge, there is no evidence that he saw his quest to improve parliamentary personnel as an effectuation of Coleridgean nostalgic, organicist conservatism. Indeed, the evidence points in the opposite direction. Hare made an epistolary confession to an American popularizer of his work that he had been "anxious to address every class of mind, and [had] therefore quoted largely from authors of various sympathies." And yet despite his almost comically excessive penchant for quotation and his publicizing instinct to cast a wide net, neither of his tracts on PR references Coleridge. There is, so far as I know, only one mention of Coleridge in Hare's publications, and that does not speak of the clerisy but merely of Coleridge's vague hope that the government would develop its subjects' faculties and permit them to better their condition.

Parsons notes the paucity of references to Coleridge but nonetheless contends that "the affinity between Hare and Coleridge was distinct." This affinity is overstated. Coleridge argued for a permanently endowed, publicly supported class of educated minds, a class without legislative functions, appointed from above, in a relation to the public not of

There is truth in the claim, but it is too blunt to be illuminating. It is often asserted that the early PR movement was “elitist.” Three components of Harean reform might earn this label, although critics contentiously attempted to apply this label to the scheme in other ways. First is something on which we have already dwelt at length: the capacitarian cutoff for the suffrage which he endorsed. This is not what scholars have in mind when they call Victorian PR elitist, since it has received hardly any attention in relation to Hare’s thought. Second was a topic already noted and which must occupy us in the account of the moral consequences of PR: the prediction that through the wider range of choice and the reduction of dictation by parties the personnel of the Commons would be

accountability but of pedagogy and edification. His clerisy did not pass laws or debate bills; it was not a forum for the expression of the range of opinions and interests in society. Instead, it was a body of men set aside and subsidized by the nation for the sake of “producing and re-producing... preserving... continuing, and perfecting, the necessary sources and conditions of national civilization,” which in practice meant maintaining “universities, and the great schools of liberal learning” and putting a “parson” and a “school-master in every parish.” The concept of the clerisy was Coleridge’s way of building into the English constitution a protection for learning and the liberal pursuits, of ensuring that the pursuit of wealth and commerce, on the one hand, and the push by the lower classes for political power, on the other, would not crowd the “higher” values out of society altogether.

This is, it should be clear, notably different from what Hare had in mind in touting his reform for bringing the best and the brightest into the legislature. In Hare’s case, the elite in question is the elite *as identified by the electorate*. Moreover, it is directly accountable to the voters. Finally, they are elected to be *legislators*, not pedagogues or scholars, and to represent their constituency, not to be an emissary from the domains of scholarship or culture. Hare was putting together a legislative body that would include members of “personal standing, elevation of character, or integrity of purpose” in order that they might pursue the common good in all its many facets, not claiming that a hybrid of religious establishment and national system for liberal education had long been built into the country’s constitution. What Coleridge and Hare shared was the desire to preserve a voice for the “higher elements” of society in the coming democratic age. But beyond that generality – to which an enormous number of the authors surveyed in this dissertation would have assented – it does not seem that Hare understood his work as belonging to any Coleridgean tradition.

One thing that has appeared to lend support to the association of Hare’s “elitism” with Coleridge’s clerisy is that Mill championed both. This attempt to use Mill to substantiate the link between Hare and Coleridge runs into a major problem, however: as Reeves notes, Mill had rescinded his endorsement of a “clerisy” in 1847, a dozen years before he would encounter PR. Having jettisoned his optimism about endowed or leisured classes, he took up Hare not as a continuation of the “clerisy” concept, but as an alternative to it. Mill’s goals of protecting diversity and dissent from oppression by the majority and of providing for the political influence of people of wisdom and integrity were to be achieved not by special provisions to prop up leisure and learning or by a constitutional balance of classes, but by guaranteeing diversity and wisdom within a sovereign Commons. In other words, the *Considerations on Representative Government* is a Harean, rather than a Coleridgean, text. Coleridge’s clerisy was an elite set apart from the normal economic, social, ideological movement of the society; Hare’s and Mill’s enlightened and diverse parliamentary corps was an elite that emerged from and was in touch with this movement.

See Kahan, *Aristocratic Liberalism*, 71-74; Parsons, *Thomas Hare and Political Representation*, esp. ch. 2 and conclusion; Coleridge, *On the Constitution of Church and State*, 51-6; Simon Sterne, *On Representative Government and Personal Representation* (Philadelphia: J.B. Lippincott & Co., 1871), 11; Reeves, *John Stuart Mill: Victorian Firebrand*, 117; Hare, “Representation in Practice and in Theory,” 192; *Election of Representatives*, 37, 233, 267; *Machinery of Representation*, 4-5, 51; Carstairs, *Short History of Electoral Systems*, 193-4; Lawrence Goldman, *Science, Reform, and Politics in Victorian Britain: The Social Science Association 1857-1886* (Cambridge: Cambridge University Press, 2004), ch. 9.

improved.¹⁴⁵⁴

The third “elitist” facet, unlike the first two, pertained directly to the classical sociology on which we have been dwelling. This was that the educated upper classes, especially in the great urban districts, were the most important of the groups which STV would prevent from being swamped. Only “accidental circumstances which appear to be passing away” given the trend toward uniformity and expansion of the electorate had previously provided for the inclusion of any members “but those who are chosen by the lower classes of electors, and those who concur with or conform to them”; the major thing to be warded off was “the danger of excluding from their just share in representation the more educated and intelligent classes.”¹⁴⁵⁵ Of the “so many classes” whose “alienation...from political life” looked to be on the horizon, it was the groups that made up “the wealthier and more instructed part of the nation” whose expulsion from parliament Hare and company were most determined to prevent.¹⁴⁵⁶

Given that the boast that STV would protect them was often attended with expressions of doubt about the intellectual preparedness of the working classes for political life,¹⁴⁵⁷ a distrustful impression of PR as a device that was classist and countermajoritarian developed on the part of radical democrats. In addition, it is noteworthy that for this fear of working-class swamping in plurality-rule to have traction, an implicit return to some version of a belief in working-class ideological homogeneity or identity politics *à la Bagehot* was required. Against the first, extreme-pluralist sociology, on the second, more traditional sociology class was again determining politics, at

¹⁴⁵⁴ After Mill’s 1868 re-election defeat, he was the example often used to illustrate how great minds were prevented from entering the Commons by local majorities even though the “quota” of support for them would easily have been gathered in a larger district or national constituency.

¹⁴⁵⁵ Hare, *Machinery of Representation*, 2; *Election of Representatives*, xxxiv.

¹⁴⁵⁶ Courtney, “Political Machinery,” 84; Hobart, “Parliamentary Reform,” 269.

¹⁴⁵⁷ E.g. Hare, *Machinery of Representation*, 44-5. Interestingly, despite his own conservatism on the suffrage Hare denied that “because, from the present state of popular education, the majority is especially liable to error...it ought not to be entrusted with the franchise”; *Machinery of Representation*, 46. The under-education of the working class was an argument against its monopoly of the representation but not against its representation.

least in the lower rungs of society and at least when he turned to warning of the perils of not accepting his plan. But the most telling thing about this third “elitist” factor was how ordinary it was, how in keeping with the broad sweep of all sociologically-concerned theories of representation in the period. Viewed from this angle, PR schemes differed from variety-of-suffrages ones only as these latter did among one another, that is, in the number of seats they was expected to put at the disposal of the various classes and interests. Viewed in terms of comparative political sociologies, their elitism does not look especially pronounced.

Underneath the *unconstrained* vote for *candidates*, then, there lay a mix of novelties and longstanding preoccupations. It is a judgment call on which side the balance rested. In my opinion, it is ultimately the side of continuity that wins out, albeit narrowly. While some variety-of-suffragists (notably Bagehot) would object to the anti-party inflection of much PR propaganda, on the whole PR proponents’ efforts to restrain and temper parties were in broad accord with a traditional descriptivism whose lineage reached back to well before the birth of anything like the modern party and whose adherents, by and large, continued to hold a Burkean conception of party.¹⁴⁵⁸ Similarly, the class- and interest-based sociology which Hareans invoked seems to have done slightly more justificatory work for reformers than the more capacious and intellectualized one.

e) The Transfer

If the previous subsection ended on a note of traditionalism, pointing to the continuity between Victorian PR and longer-standing legacies of thought and practice, we now turn to what was indisputably an innovation: the transferable vote. There was no precedent in the British constitution for allowing the elector to list multiple preferences for a single vote and allocating the

¹⁴⁵⁸ E.g. GC Lewis, *A Dialogue on the Best Form of Government* (London: Parker Son and Bourn, 1863), 41-2; Grey, *Parliamentary Government*, 47-8; Holyoake, *The Principles of Secularism Illustrated*, third edition (London: Austin & Co., 1871), 21-2.

vote to the highest-ranked candidate to whose quotient it could still contribute.¹⁴⁵⁹

The transferable vote was as controversial as any part of Hare's plan, but most of the controversy that it provoked occurred on what I have called the "moral" front: the most pointed parts of the disagreement about the transfer concerned opposed evaluations of its political and intellectual ramifications. Perhaps because so few of the writers whom we have been discussing here were anything like pure philosophers, or perhaps because discussion of the descriptive properties of plans was typically focused on the issues of suffrage and constituency-construction, conceptual discussion of the descriptive value of the transfer was surprisingly scarce. From the late-1860s on there was, to be sure, much technical debate about the relative merits of different methods of calculating the quota, and this had a quasi-descriptive dimension. But as to the big-picture question of whether the transfer brought the Commons to more closely approximate a mirror of society, few thinkers addressed it directly. Consequently I will have to stray a bit further from the source material than I have done elsewhere in this dissertation. It should be said, though, that the fact of the under-theorization of this aspect of the transfer is itself a compelling datum: it reveals how far from the mainstream British parliamentary tradition the transfer seemed to Hare's contemporaries – in comparison to his challenging of the predominantly territorial basis of the representation, for instance. For many Victorians, including not only anti-democratic descriptivists but also anti-proportionalist democrats, the transfer pushed beyond the limits of their toleration for inventiveness and divergence from the historical constitution.

The final question about the conceptual apparatus of Victorian PR and its place relative to the other traditions is, *what was the descriptive value of the transfer? was it primarily a "descriptive" device, or did it serve other purposes and stem from other grounds?*

On this front, as on others, the answer is not straightforward. Let us begin with the

¹⁴⁵⁹ The first Englishman to think of a transfer mechanism was Thomas Wright Hill, but he did not publish his researches and they were unknown in his home country until after Hare; Hart, *Proportional Representation*, 6-8.

affirmative side.

The cardinal way in which the transfer could be said to function as a descriptive device was in its encouragement of electors to vote their true preferences. This was in keeping with what has emerged as a core Harean principle, that of *mirroring-through-freedom*. Just as the transcendence of territoriality provided a more accurate gauge of opinion than did local districts by expanding the field of choice, and just as the vote for persons rather than for parties removed constraints on the candidates among whom voters could choose, the transfer increased electoral freedom by making it possible for citizens to cast their votes for their favored candidates even if their return was uncertain without fear that the votes would be wasted.¹⁴⁶⁰ STV rendered it unnecessary to vote for the least-bad option out of concern for electability, and it therefore liberated the citizen to rank-order candidates in the way that best expressed their own beliefs and priorities, to “act upon his conclusion in all earnestness and sincerity.”¹⁴⁶¹ As a result a Harean parliament would be marked by inclusiveness of a wider range of beliefs and a diminishment of the constriction and “stereotyping” of belief that party-dominance encouraged.¹⁴⁶² The transfer was a tool of emancipation, and this was emancipation in service of the revelation of the truth about the state of beliefs and preferences in society.

In contributing to the augmentation of electoral liberty the transfer had a claim, then, to descriptive credentials. On the other hand, a commitment to descriptivism, even within a proportionalist framework, certainly did not demand that one support the transferable vote. For two linked sets of reasons, the norm of mirroring – even in the wholly procedural, less robust sense of properly translating voter preferences – was hardly determinative of acceptance of the transfer.

¹⁴⁶⁰ E.g. Hare, *Election of Representatives*, vii-viii, 121-2.

¹⁴⁶¹ *Ibid.*, 144.

¹⁴⁶² E.g. Hare, “Just Expression” 203 and “Reform Bill of the Future” 77; Ostrogorski, *Democracy and Political Parties*, vol. 2, conclusion; Humphreys, *Proportional Representation*, 45, 55, 210-3.

There were both (1) descriptivist objections to the transfer and (2) programmatic alternatives that seemed to satisfy this version of mirroring equally well.

To begin with (1): the transfer counts lower-ranked preferences equally with higher-ranked ones. Later preferences are only turned to if the above-listed candidate(s) have already attained the quota. But if brought into play, the tenth-listed choice is worth a full vote just as much as the top-listed one.

This aspect of Hare's transfer provoked hostility for being distortionary or anti-descriptive. We might call this the "intellectual misconceptions" critique of STV.¹⁴⁶³ According to this line of objection, the single transferable vote was founded on a political-psychological or –epistemological error: namely, that it ignored the truth that the great bulk of citizens had only a quite limited stock of genuine beliefs and opinions. To ask them to do more than choose their most preferred candidate was to plunge too deep and to introduce votes that, because they were such "late preferences," had no "value" as bearers of opinion.¹⁴⁶⁴ To require of the elector that he "arrange in order more names than there is time during the election to turn for him into real persons" was to introduce noise into the representative system, so to speak, for the "ordinary citizen" simply lacked the capacity or the resources "to acquire a really clear conception of the personality" of very many candidates or of the "causes which they all advocate."¹⁴⁶⁵ Nor was the problem simply that late preferences were not the bearers of real convictions.¹⁴⁶⁶ It was also that, even if the voter really did have an ample supply of genuine opinions, he could not approach the sixth spot on his list in the same spirit as he

¹⁴⁶³ Wallas, *Human Nature in Politics*, 232.

¹⁴⁶⁴ Meredith, *Proportional Representation in Ireland*, 70, 19.

¹⁴⁶⁵ Wallas, *Human Nature in Politics*, 238 and "The American Analogy," 512.

¹⁴⁶⁶ E.g. Dodgson, "Parliamentary Elections," 159, among many others.

approached the first, since the odds of its actually serving as an effective vote were smaller.¹⁴⁶⁷ It was simply untrue that, in the real world, a late preference was worth as much as a first preference, and yet STV depended on the pretense that they were “equal.”¹⁴⁶⁸ In consequence it delivered a legislature that was not a true likeness of public opinion.

Two points about the intellectualist fallacy criticism merit being highlighted. First, it resembled arguments from the variety-of-suffragists; it reinjected an element of “objectivity” in evaluating the condition of society and public opinion back into the theory of representation. For the likes of Wallas and Meredith, the rejection of STV was based on the belief that it did not accord with *the relevant facts out there*, and this was precisely the same reasoning on which variety-of-suffragists and deliberative democrats founded the support for their schemes. Similarly, this objection operated on the same logic as the argument by which a Bagehot or a Greg had excluded certain groups from the franchise altogether; it was the *opinion-holding criterion* transplanted from the sociological to the psychological/epistemological domain.¹⁴⁶⁹ It applied the idea that only genuine opinions should participate in the electoral system within the individual rather than across society.

Second, there was a divergence in the predictions about the practical outcome resultant from STV’s falsification of public opinion. To go into detail depicting them would trespass on the more sustained discussion that can be offered in the upcoming chapter on the practical and moral controversies over PR; at this juncture all that is pertinent is to note that the accusation about STV’s deficiencies in representativeness were linked to harms in the function of the legislature. Two main

¹⁴⁶⁷ Meredith offered a couple different formulations of the point: “Under the single transferable vote system he has only one vote, and for which candidate that vote may count is a matter of speculation on contingencies which it is difficult to estimate. As the contingency becomes more and more remote, the elector becomes more and more reckless”; “Under the single transferable vote system there is every inducement to vote for a crank, and he generally manages to amass a considerable number of late preferences. For most of us are cranks when probed as deep as a ninth or tenth preference”; *Proportional Representation in Ireland*, 65, 71.

¹⁴⁶⁸ *Ibid.*, 70.

¹⁴⁶⁹ See ch. 4, section 2.

streams of concern emerged. One (which included the likes of Meredith, and has its descendants today) thought that the inclusion of late preferences would privilege a kind of fuzzy centrism, since apart from a few statesmen of principle most of the figures of whom the average elector would be aware would be agreeable but bland celebrity-style types with nondescript platforms that could appeal in a shallow way to a wide swathe of people. The other – to which numerous notable authors from Bagehot through Wallas belonged¹⁴⁷⁰ – believed that the result of voters’ inability to consider multiple candidates was that they would rely on party “tickets” to make out their ranking of candidates. This would increase the hegemony and rigidity of the great national parties and mean that in practice if not in theory STV was not much different from the dreaded list system.

It should be noted that Hare was not without an answer to these forecasts of the ills that accrued downstream of voters’ limitations of intellect and belief. Again, to avoid encroaching on the subject matter of the next chapter, it suffices merely to say that Hare conceded the great deficiencies of actual voters but predicted that once his scheme was in action it would bring about a great deal of improvement for the elector. Unsurprisingly, this was not a convincing rejoinder to those who were already suspicious of PR.¹⁴⁷¹ Nevertheless, even if one accepted Hare’s optimism about the political-intellectual perfectibility of voters and was therefore unmoved by the charge that the transfer created a distorted picture of the state of political opinion, it was still not obvious that (2) the transfer was the right instrument for advancing the legislature’s mirroring capacity. Consider two alternatives to the *transfer by the voter* which were not liable to criticisms of the style of Meredith’s and Wallas’s but which were consistent with the other dimensions of Hare’s plan covered so far. Neither has been

¹⁴⁷⁰ Wallas is often credited with having inaugurated an era of greater psychological and sociological realism in political science, but on the subject of representation his insights were really quite derivative of Bagehot and were familiar Victorian thoughts. For the conventional wisdom about Wallas’s originality, see e.g. the assessments cited in Sugwon Kang, “Introduction: Graham Wallas and Liberal Democracy,” in Wallas, *Human Nature in Politics*, v-xxix.

¹⁴⁷¹ See e.g. Wallas, “The American Analogy,” 513: “A ‘Baconian’ democrat would try to found his electoral system, not on any conception of what the voter ought to be, but upon as exact an estimate as he can form of what the voter is, and can in the near future become.”

widely implemented, but comparison with them is illustrative. Importantly, both of them were listed as “proportional systems” in Hoag and Hallett’s *Proportional Representation* of 1926, which doubled as one of the great early American textbooks on electoral systems and a work of advocacy for STV.¹⁴⁷²

The first, which Hoag and Hallett named the “schedule system,” replaced the voter-designated transfer with a *candidate*-designated one.¹⁴⁷³ It was sometimes stipulated that before the election the candidate would publish a list of the other candidates to which his surplus of votes would be given, but this was not an essential provision; some proponents were happy simply to leave the transfer to the candidate without any binding declaration of how he would use it. For this reason I prefer to call it the *candidate-chosen* transfer, to highlight the real point of opposition with STV – that what Hare and company wanted done by the voter was now to be done by the politician who received the votes. This plan was actually endorsed by several prominent Victorian writers on representation, including Dodgson, the English barrister Walter Baily, and the Irish barrister Archibald Dobbs.¹⁴⁷⁴

The second was what Hoag and Hallett dubbed the “proxy system.”¹⁴⁷⁵ On this plan there is no transfer whatsoever; instead a threshold of votes is established for election to the assembly, and then the voting power of each member is weighted according to the number of votes received beyond the threshold. Thus in deciding on a bill the vote of a Gladstone might be worth, say, fifty times more than the vote of an obscure backbencher and twice as much as a respected Cabinet-level statesman. This proposal does not seem to have been championed by any eminent Victorians, but it

¹⁴⁷² Although both were American academics, Hoag and Hallett were very well-versed in English theory and institutions.

¹⁴⁷³ Hoag and Hallett, *Proportional Representation*, 53-6.

¹⁴⁷⁴ Dodgson called this the “clubbing method,” which he took to be the “chief novelty” of his “Proportional Representation’ scheme. He was wrong to think it novel, however, since both Baily and Dobbs had beaten him to it. See Abeles “Introduction to ‘Proportional Representation,’” 116, 119; Dodgson, *Principles of Parliamentary Representation*, 192-4; Baily, *A Scheme for Proportional Representation* (London: W. Ridgway, 1869); Dobbs, *General Representation, On a Complete Readjustment and Modification of Mr. Hare’s Plan* (London: Longmans, Green, and Co., 1871).

¹⁴⁷⁵ Hoag and Hallett, *Proportional Representation*, 57-9.

does resonate with the Carlylean countercurrent in English political culture which wanted to unshackle and foster strong leaders in a way that parliamentarism historically had not. In light of this affinity and its potential to massively empower a few very popular politicians, we might call this the *Caesarist assembly*.

The presentation of these two alternatives, scanty as it is, is enough to suggest the crucial point: namely, that Hare's version of the transfer was far from an obvious device to include if mirroring alone (or even mirroring plus the minimization of wasted votes) were the goal of reform. It is unclear why the accurate reflection of first-preferences realized by weighting voting power according to vote share or transferring at the candidate's discretion suffered any deficit of *mirroring* in comparison to the employment of the medley of higher and lesser preferences demanded by the transfer to secure equal quotas. Earlier it was shown, in connection to claims such as Courtney's that PR would liberate thought and increase multiplicity of opinion, that what was posed as a matter of whether parliament would or would not be a mirror of the nation was actually better understood as a question of what kind of nation one wanted parliament to be mirroring. Similarly, evaluating the transfer on the baseline of accurately reflecting preferences could only be indeterminate; one could not travel solely from this norm to the institution of STV. It was, at the least, arguable that the Caesarist or candidate-chosen assembly was more faithful to the salient facts of parliamentary life and to the way in which opinions about parliament were actually formed.¹⁴⁷⁶

¹⁴⁷⁶ Dobbs, for instance, was emphatic that his switch to candidate-designated transfers was a remedy not just for the "practical difficulty" associated with voter-designated transfers but was also an improvement in terms of the assembly's representativeness: "Each candidate can have only one seat in the House, and one vote in divisions of the House, but even now votes in the division list are of very different weight in the public estimation, though of equal voting power. A statesman of high character, by whatever constituency he may be elected, though it were the smallest and least important, has necessarily more weight and influence in the great council of the nation than an insignificant person, though he should sit for the largest borough or county in the realm. High character, intellect, statesmanlike power and ability, together with the political influence which ought to and generally does accompany them, must under all conceivable circumstances have their weight; the plan, as modified, herein, makes evident the general popularity of each statesman, and enables him to gauge it for himself at each election, just as the changing height of the mercury in a barometer shows the varying weight and ebb and flow of the atmosphere, or as the fluctuating quotations on the Stock Exchange are a sure indication of the rising or falling credit of States or Companies, and the shifting to and fro of investments"; Dobbs, *General Representation*, 1, 16-7.

If the superiority of the single transferable vote could not be proven by appeal to the value of representativeness alone, it had to be preferred, ultimately, on another ground. And this was, I think, the conviction that these alternatives would undercut the possibility of the *kind of assembly* that Hare, STV advocates, and indeed a broad consensus among thinkers about representation wanted. Such an assembly had to be numerous to include many shades of opinion and interest such that a working division of epistemic labor might form; it had to avoid being given over to a monopoly of any social group or all-powerful figure such that “will” might silence reason; it had to possess a margin of independence from party dictates and from temporary shifts in desire at the local level; it had to empower candidates to follow their consciences, to change their minds, to debate in good faith. What Hare’s version of the transfer could do better than these other “proportionalist” arrangements, the Victorian PR reformer believed, was deliver a true “deliberative body,” make the Commons a “place where every interest and shade of opinion in the country can have its cause even passionately pleaded, in the face of the government and of all other interests and opinions, can compel them to listen, and either comply, or state clearly why they do not.”¹⁴⁷⁷ Even in the 1910s, when the luster of the deliberative Commons had waned, it was still a core element of the STV creed that “duties of discussion” were preeminent in parliament and that the “common will” which its

Even the young Bagehot, in one of his most contrarian moods, defended the Imperial practice of Louis Napoleon specifying his candidates before elections to the National Assembly with arguments that could justify the Caesarist or candidate-chosen parliament: “Nor do I concur with those who censure the President for “recommending” avowedly the candidates he approves. It is a part of the great question, How is universal suffrage to be worked successfully in such a country as France? The peasant proprietors have but one political idea, that they wish the Prince to govern them;—they wish to vote for the candidate most acceptable to him, and they wish nothing else. Why is he wrong in telling them which candidate that is?”; Bagehot, “Letters on the French Coup d’Etat of 1851,” 81.

A final example: Dodgson maintained in a similar spirit that the “clubbing” or “candidate-chosen” technique just accorded better with what it was actually like to want someone to represent you in parliament than the voter supplying a rank-ordered list did: “somebody shall decide how to use the surplus votes. But who? ...Surely the Electors would not have so much confidence [in anyone] as in *the man himself* [for whom he voted]. And to *him* I would refer the question, who is to have the surplus-votes. The Elector should be made to understand that, in giving his vote to A, he gives it him as an absolute property to treat as he will – either by using it to secure his own return, or to help another candidate of whom he approves, or (if there be none such in the field) by leaving it unused. If he cannot trust the man, for whom he votes, so far as to believe that he will use the vote for the best, how comes it that he can trust him so far as to wish to return him as Member?”; Dodgson, “Parliamentary Elections,” 158-9.

¹⁴⁷⁷ Mill, “Recent Writers on Reform,” 358; *Considerations*, 424, 433. And see e.g. Lubbock, *Representation*, 64; Courtney, “Representation of Minorities,” 153, “Political Machinery,” 81-2.

legislation was meant to embody required that every section of “the opinion of the community” be given “consideration” within it.¹⁴⁷⁸ As with the variety-of-suffragist or the diverse democrat, the nineteenth-century proportionalist was guided not by an isolated ideal of representativeness, but by this ideal as it was shaped by a theory of deliberation and commitment to a certain image of the Commons.

And it was because it conflicted with this broader image, and not because it was undescriptive or unrepresentative *per se*, that the PR community rejected these other proportionalisms. The candidate-chosen transfer was liable to the objection that it would further tighten the grip of parties, thus compromising the prospects for true deliberation in the assembly.¹⁴⁷⁹ The proxy system was even worse: in taking the unprecedented step of abandoning the “very old tradition” of “the equality of members in a representative body,”¹⁴⁸⁰ it threatened to implant something resembling plebiscitary, autocratic government within hollowed-out liberal representative structures. These lesser-known schemes were not failures of mirroring from the PR viewpoint, since they could not be said in any obvious way translate the preferences of the electorate into the composition of the assembly *incorrectly*. But this did not mean that they were not deeply anathema to Victorian PR. It was just that the source of the distaste for them lay elsewhere: namely, in the anticipation that they would produce the wrong kind of assembly. STV was, then, far from a neutral “report” of what was “out there,” even if it eradicated certain forms of arbitrariness. Like the variety-of-suffragist, albeit to a different degree, Hare and company were engineering the machinery

¹⁴⁷⁸ Williams, *Proportional Representation and British Politics*, 19.

¹⁴⁷⁹ See e.g. Hoag and Hallett, *Proportional Representation*, 56; John Chapman, “Politics, Sociology, Voyages, and Travels,” *Westminster Review*, vol. 41, no. 2 (Apr. 1872), 519-38, at 525. The fact that Meredith, that great trumpeter of list over STV judged Dobbs’s scheme a “considerable improvement” over Hare’s further supports the impression that it seemed to contemporaries to be more on the list side of the PR spectrum; Meredith, *Proportional Representation in Ireland*, 45. Interestingly, Dodgson was sensitive to this objection and in fact turned it back on the STV camp. He was among the large and influential group, mentioned above, that alleged that STV would in practice degenerate into competition between rival lists and increase the strength and rigidity of parties; Dodgson, “Parliamentary Elections,” 158.

¹⁴⁸⁰ Hoag and Hallett, *Proportional Representation*, 58.

of representation not just to mirror society, but to ensure the existence of a certain sort of assembly.

Rather unexpectedly, then, this subsection closes on a note similar to the previous one. The most singular aspect of Hare's reinvention of representation in fact manifested his basic agreement with the historic parliamentary model. Above all else Hare was a devotee of something very close to the "Whig" ideal of the Commons which held the floor from Burke to Bagehot: a Commons at once stabilizing, educative, inclusive, uncorrupt, enlightened, diverse, and deliberative. His aim was to permit the assembly to continue to meet these criteria even after the utility of "the traditional method of filling the House of Commons" had ceased; he sought traditional ends by the only means he thought adequate to them, namely, nontraditional ones.¹⁴⁸¹

This conclusion fits the basic arc of nineteenth-century political thought. PR was essentially a product of a transitional age in the perception of representative government. As touched on before, the mid-century was the zenith of prestige for parliamentarism, but as the decades rolled on it became increasingly common to depict a crisis of parliamentary government, with the "mother of Parliaments" suffering from "declining respect."¹⁴⁸² As with his anxieties about the tightening grip of centralized partisanship, which anticipated by a decade or so the main chorus of complaints about party government replacing parliamentary government, Hare was among the earlier voices to fret about the "diminution of that respect with which the House of Commons is now regarded."¹⁴⁸³ When many of his peers still believed that the electoral-parliamentary system was functioning healthily if not perfectly, he was already viewing his mission as restorative.¹⁴⁸⁴ Consequently in the

¹⁴⁸¹ Hare, *Election of Representatives*, 75.

¹⁴⁸² Lubbock, "Proportional Representation," reprinted in *Political Pamphlets of Lewis Carroll*, 140-4, at 144 (originally published in the *Daily News*, 15 May 1884); Lecky, *Introduction to Democracy and Liberty*, vii.

¹⁴⁸³ Hare, *Election of Representatives*, 102.

¹⁴⁸⁴ In this regard Hare was in a position parallel to that of his friend Mill on the liberty of thought: the bleakness of Hare's assessment of then-current parliamentary politics struck many of his contemporaries as exaggerated in the same way that Mill's cries against his society's despotic conformity did; see ch. 2, section 2(b)(i).

early decades PR came under fire for being based in an alarmist, inaccurate diagnosis of the status quo: critics charged that he was offering a cure worse than the disease, that in trying to fix parliament he was jeopardizing something that was not broken in the first place. Later, as the century drew to a close, faith in parliamentary government crumbled. In this dourer climate PR proponents stood out for their unshaken devotion to the old ideal. Instead of contending that the PR camp was unduly critical, opponents now argued that their fidelity to the classical model of the Commons was quixotic; PR, they charged, was ill-equipped to revive a flagging parliamentarianism. Throughout the political and intellectual shifts of a half-century, Hareans remained devoted to an interpretation of what *parliamentary* politics involved.

Conceptually and institutionally, proportional representation, like all “inventions” in politics, was a mix of old and new. It was also a medley of both variety-of-suffragist and democratic elements – and, within the latter school, of both the radical- and the deliberative-democratic strands – blending them in such a way that it is impossible to depict it as simply a new version of an old song. And yet it incorporate many of the standard melodies. It combined familiar themes from across the spectrum of authors examined in the previous three chapters – Diceyan, Kinnearean, Pochinian, Bagehotian moments – in ways that were not obviously internally coherent or mutually reinforcing, and furthermore it added a layer of norms and techniques peculiar to itself, such as electoral freedom and the transfer. It was neither solely democratic nor anti-democratic, neither an entire prolongation nor an overturning of the vision of the theory of electoral variegation. Perhaps the one qualifier that indisputably applies to it, though, is “Victorian”: it addressed itself to the full breadth of the theory and practice of representation in the world from which it emerged.

It was Victorian in one final way as well – its failure to end the controversy over representation. There was wide (albeit not uncontested) assent to the general proposition that the

Commons should mirror the nation. The attempt to interpret and implement this ideal, however, gave rise to as much diversity as there was in the pluralistic society whose faithful reflection they sought to carry into the assembly. In 1866, still within a decade of Hare's invention, Henry Vere Hobart began a plea for STV by lamenting the great "diversity of meaning" among the proposals for getting the country "duly represented in Parliament."¹⁴⁸⁵ Almost a half-century later, in much altered electoral-representative circumstances, Ramsay MacDonald observed in the course of an essay hostile to proportionalism that "a century of discussion has not yet settled in practice" the question of representation.¹⁴⁸⁶ Not even "the great political doctrine of modern times" was equal to the task of resolving what was, in my view, the richest and widest-ranging debate about representation that has ever been seen.¹⁴⁸⁷

¹⁴⁸⁵ Hobart, "Parliamentary Reform," 259.

¹⁴⁸⁶ MacDonald, *Socialism and Government*, vol. 1, 127.

¹⁴⁸⁷ Hare, *Election of Representatives*, 205.